

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT AUTHORIZATIONS

DECEMBER 15, 1989.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2061]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2061) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1992, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fishery Conservation Amendments of 1989".

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 101. REFERENCES TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

Whenever in this title a section or other provision is amended or repealed, such amendment or repeal is deemed to be made to that section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 102. FINDINGS AND POLICY.

(a) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is amended by adding at the end the following:

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"(8) The collection of statistically reliable scientific data is essential to the effective conservation and management of the fishery resources of the United States."

(b) **PURPOSES.**—Section 2(b)(2) (16 U.S.C. 1801(b)(2)) is amended by inserting "as well as swordfish and billfish," after "highly migratory species,".

(c) **POLICY.**—Section 2(c) (16 U.S.C. 1801(c)) is amended by—

(1) inserting "considers the effects of fishing on immature fish and encourages development of measures that avoid unnecessary waste of fish;" after "and enforcement;" in paragraph (3);

(2) striking "and" at the end of paragraph (4);

(3) striking the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(4) adding at the end the following:

"(6) to achieve international agreement on banning large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation as soon as possible, including support for the Tarawa Declaration and other international efforts to achieve such a ban."

SEC. 103. DEFINITIONS.

(a) **NEW DEFINITIONS.**—Section 3 (16 U.S.C. 1802) is amended by adding at the end the following:

"(28) The term 'large-scale driftnet fishing' means a method of fishing in which a gillnet composed of a panel or panels of webbing with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

"(29) The term 'migratory range' means the maximum area within which fish of a particular species can be found in numbers that indicate regular occurrence of that species during any part of a year, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

"(30) The term 'waters of a foreign nation' means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States."

(b) **CONFORMING AMENDMENT.**—Paragraph (1) of section 101(b) (16 U.S.C. 1811(b)(1)) is amended by striking "any foreign nation's" and all that follows through the end of the paragraph and inserting in lieu thereof "any waters of a foreign nation."

SEC. 104. CLARIFICATION OF APPLICATION TO HIGHLY MIGRATORY SPECIES.

(a) **REPEAL OF EXCLUSION.**—Section 102 is repealed.

(b) **SECRETARY OF STATE TO SEEK NEGOTIATIONS.**—The Secretary of State shall promptly seek negotiations with foreign nations for the purpose of revising existing international agreements entered into by the United States that are inconsistent with the assertion by the United States of fishery management authority over highly migratory species.

(c) **HIGHLY MIGRATORY SPECIES DEFINED.**—In this section the term "highly migratory species" has the meaning that term has in section 3(14) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(14)).

SEC. 105. FOREIGN FISHING.

Section 201(d) (16 U.S.C. 1821(d)) is amended to read as follows:

"(d) **TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act."

SEC. 106. INTERNATIONAL FISHERY AGREEMENTS.

Section 202(a)(4)(B) (16 U.S.C. 1822(a)(4)(B)) is amended by—

(1) striking "and" after "anadromous species" and inserting in lieu thereof a comma; and

(2) adding ", swordfish and billfish" after "highly migratory species".

SEC. 107. PERMIT FEES FOR FOREIGN FISHING.

(a) **FEES.**—Section 204(b)(10) (16 U.S.C. 1824(b)(10)) is amended to read as follows:

"(10) **FEES.**—(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this sec-

tion. The Secretary, in consultation with the Secretary of State and the appropriate regional fishery management council, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

"(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury."

(b) SANCTIONS.—Section 204(b)(12) (16 U.S.C. 1824(b)(12)) is repeated.

SEC. 108. INTERNATIONAL BAN ON LARGE-SCALE DRIFTNET FISHING.

Section 206 (16 U.S.C. 1826) is amended to read as follows:

"SEC. 206. INTERNATIONAL BAN ON LARGE-SCALE DRIFTNET FISHING.

"(a) NEGOTIATIONS.—The Secretary of State shall seek to secure, as soon as possible after the date of the enactment of the Fishery Conservation Amendments of 1989, an international ban on large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation.

"(b) REPORT.—Not later than 18 months after the date of the enactment of the Fishery Conservation Amendments of 1989 and every year thereafter until such a ban is secured, the Secretary of State shall transmit to the Congress a report—

"(1) describing the steps the Secretary has taken to initiate and complete negotiations pursuant to subsection (a);

"(2) detailing the progress of those negotiations;

"(3) listing those nations which have refused to enter into those negotiations and which engage in large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation; and

"(4) making recommendations for legislative action which could be taken to encourage the nations listed pursuant to paragraph (3) to cease large-scale driftnet fishing."

SEC. 109. REGIONAL FISHERY MANAGEMENT COUNCILS.

"(a) INCREASED NUMBER OF VOTING MEMBERS OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.—Section 302(a)(7) (16 U.S.C. 1852(a)(7)) is amended in the second sentence—

(1) by striking "11" and inserting in lieu thereof "13";

(2) by striking "and 2 of whom" and inserting in lieu thereof ", 3 of whom"; and

(3) by inserting ", and 1 of whom shall be appointed from the State of Oregon" after "Washington".

(b) MEMBERS' QUALIFICATIONS.—

(1) IN GENERAL.—Section 302(b)(2)(A) (16 U.S.C. 1852(b)(2)(A)) is amended—

(A) by striking the first sentence and inserting in lieu thereof the following: "The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or commercial experience, scientific expertise, or academic training, are knowledgeable regarding the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned."; and

(B) by striking the second sentence and inserting in lieu thereof the following: "The Secretary, in making appointments under this section, shall, to the maximum extent practicable, ensure a fair representation on each Council of the active participants (or their representatives) in the commercial fisheries under the jurisdiction of that Council."

(2) APPLICATION.—The amendments made by paragraph (1) shall apply to an individual appointed or reappointed as a member of a Regional Fishery Management Council after the date of the enactment of this Act.

(c) LIMITATION ON TERMS OF VOTING MEMBERS.—Section 302(b)(3) (16 U.S.C. 1852(b)(3)) is amended by adding at the end the following: "No member appointed after January 1, 1986, may serve for more than 2 consecutive terms."

(d) COMPENSATION AND EXPENSES OF MEMBERS.—Section 302(d) (16 U.S.C. 1852(d)) is amended—

(1) in the first sentence by inserting "if appointed before January 1, 1990, and at the daily rate of \$200 if appointed or reappointed after that date" before the period at the end; and

(2) in the second sentence by inserting "and Council staff members" after "other nonvoting members".

(e) MEETING OUTSIDE OF GEOGRAPHICAL AREA.—Section 302(e)(3) (16 U.S.C. 1852(e)(3)) is amended by striking "in the geographical area concerned" and inserting in lieu thereof "at appropriate times and places".

(f) DECISIONS AND RECOMMENDATIONS OF ADVISORY COMMITTEES AND PANELS.—Section 302(g) (16 U.S.C. 1852(g)) is amended by adding at the end the following:

"(3)(A) Each Council shall establish and maintain a United States fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

"(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

"(4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature."

(g) FISHERY HABITAT CONCERNS.—Section 302(i) (16 U.S.C. 1852(i)) is amended to read as follows:

"(i) FISHERY HABITAT CONCERNS.—(1) Each Council—

"(A) may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

"(B) shall, in a timely manner, comment on and make recommendations concerning any such activity that, in the view of the Council, may affect the habitat of an anadromous fishery resource under its jurisdiction.

"(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity concerned on the habitat of the anadromous fishery resource."

(h) CLOSED MEETINGS.—Section 302(j)(3) (16 U.S.C. 1852(j)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking the semicolon at the end of clause (ii) and all that follows through "time and place of the meeting." and inserting in lieu thereof a period; and

(B) by inserting "of paragraph (2)" after "(D) and (F)"; and

(2) by adding at the end the following:

"(B) If any meeting or portion thereof is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment matters or other internal administrative matters."

(i) CONSIDERATION OF NEW INFORMATION.—Section 302(j) (16 U.S.C. 1852(j)) is amended by adding at the end the following:

"(6) At any time when a Council considers new information from a State or Federal agency or from a Council advisory body, it shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures."

SEC. 110. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED DATA COLLECTION AND GEAR.—Section 303(a) (16 U.S.C. 1853(a)) is amended—

(1) by striking paragraph (6) and inserting in lieu thereof the following:

"(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery: *Provided*, That the adjustments shall not adversely affect the conservation efforts in other fisheries";

(2) by striking the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following:

"(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific

data which is needed to ensure the effectiveness of the plan in conserving and managing the fishery resources covered by the plan."

(b) **DISCRETIONARY PROVISIONS.**—Section 303(b) (16 U.S.C. 1853(b)) is amended as follows:

(1) **PERMITS AND FEES.**—Paragraph (1) is amended to read as follows:

"(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

"(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishing resources beyond such zone;

"(B) the operator of any such vessel; or

"(C) any United States fish processor who first receives fish that are subject to the plan;"

(2) **FISH PROCESSOR DATA; OBSERVERS.**—Paragraphs (7) and (8) are redesignated as paragraphs (9) and (10), respectively, and the following is inserted after paragraph (6):

"(7) require fish processors to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

"(8) require that observers be carried on board a vessel of the United States engaged in fishing in the exclusive economic zone for the purpose of collecting data necessary for the conservation and management of the fishery;"

(c) **CONFIDENTIALITY OF STATISTICS.**—Section 303(d) (16 U.S.C. 1853(d)) is amended—

(1) in the matter preceding paragraph (1) by striking "subsection (a)(5)" and inserting in lieu thereof "subsections (a) and (b)";

(2) by striking "or" at the end of paragraph (1);

(3) by redesignating paragraph (2) as paragraph (3); and

(4) by inserting after paragraph (1) the following:

"(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or"

SEC. 111. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) **TECHNICAL AMENDMENTS.**—Section 305 (16 U.S.C. 1855) is amended—

(A) by redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively; and

(B) by redesignating subsections (g), and (h) as subsections (d) and (e), respectively.

(2) **CONFORMING AMENDMENTS.**—Section 304 is amended—

(A) in subsection (b)(1) by striking "305(c)" in the first sentence and inserting in lieu thereof "305(a)"; and

(B) in subsection (b)(3)(D) by striking "305(c)" and inserting in lieu thereof "305(a)".

(b) **JUDICIAL REVIEW OF CERTAIN IMPLEMENTING ACTIONS.**—Section 305(b), as redesignated by subsection (a)(1)(A), is amended—

(1) by striking "Regulations promulgated by the Secretary under this Act" and inserting in lieu thereof "(1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2)";

(2) in paragraph (1) (as designated by paragraph (1) of this subsection)—

(A) by inserting "or the action is published in the Federal Register, as applicable," after "the regulations are promulgated";

(B) by striking "(1)" and inserting in lieu thereof "(A)";

(C) by striking "(2)" and inserting in lieu thereof "(B)"; and

(D) by inserting "or action" after "any such regulation"; and

(3) by adding at the end the following:

"(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including actions that establish the date of closure of a fishery to commercial or recreational fishing.

"(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1) not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

"(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

"(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way."

(c) **EMERGENCY ACTIONS.**—Section 305(c)(2)(A) (16 U.S.C. 1855(c)(2)(A)), as redesignated by subsection (a)(1)(A), is amended by inserting "(other than the voting member appointed under section 302(b)(1)(B))" after "who are voting members".

SEC. 112. STATE JURISDICTION.

Section 306(c) (16 U.S.C. 1856(c)) is amended—

- (1) in paragraph (1)(B) by inserting "and the application specifies the species to be processed" before the period at the end; and
- (2) by striking paragraph (2) and inserting in lieu thereof the following:
 - "(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—
 - "(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—
 - "(i) consulting with the appropriate Regional Fishery Management Council and Marine Fisheries Commission, and
 - "(ii) considering any comments received from the Governor of any other State where the fishery occurs; and
 - "(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State."

SEC. 113. PROHIBITED ACTS.

(a) **VIOLATION OF LOBSTER CONSERVATION MEASURES; THEFT; ASSAULT; LARGE-SCALE DRIFTNET FISHING.**—Section 307(1) (16 U.S.C. 1857(1)) is amended—

- (1) in subparagraph (G) by striking the semicolon at the end and inserting in lieu thereof the following: ", or any whole live or frozen lobster of the species *Homarus americanus*, that—
 - "(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, or any successor to that plan, implemented under this title;
 - "(ii) is bearing eggs attached to its abdominal appendages; or
 - "(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;"
- (2) by striking "or" at the end of subparagraph (H);
- (3) by striking the period at the end of subparagraph (I) and inserting in lieu thereof a semicolon; and
- (4) by adding at the end the following:
 - "(J) to knowingly and without authorization steal, remove, damage, or tamper with—
 - "(i) fishing gear owned by another person and which is located in the exclusive economic zone; or
 - "(ii) fish contained in such fishing gear; or to attempt to do so;
 - "(K) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer or a supplementary observer on a vessel under this Act; or
 - "(L) to engage in large-scale driftnet fishing."

(b) **VIOLATION OF INTERNATIONAL FISHERY AGREEMENT.**—Section 307 (16 U.S.C. 1857) is amended—

- (1) in paragraph (3) by striking "; and" and inserting in lieu thereof a semicolon;
- (2) in paragraph (4) by striking the period at the end and inserting in lieu thereof "; and"; and
- (3) by adding at the end the following:
 - "(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight under section 203."

SEC. 114. CIVIL PENALTIES.

Section 308 (16 U.S.C. 1858) is amended—

- (1) in the section heading by inserting "AND PERMIT SANCTIONS" after "CIVIL PENALTIES";
- (2) in subsection (a) by striking "\$25,000" in the second sentence and inserting in lieu thereof "\$100,000"; and
- (3) by adding at the end the following:

"(g) PERMIT SANCTIONS.—(1) In any case in which a vessel has been used in the commission of an act prohibited under section 307, in which the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, or in which any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

"(A) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

"(B) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(C) deny such permit; or

"(D) impose additional conditions and restrictions on any permit issued to, or applied for by, that owner, operator, or vessel under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involving and on any permit issued under that application.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership.

"(4) The Secretary shall reinstate any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise."

SEC. 115. ASSAULT AS CRIMINAL OFFENSE.

Section 309(a)(1) (16 U.S.C. 1859(a)(1)) is amended to read as follows:

"(1) section 307 (1)(D), (E), (F), (H), (I), or (K); or".

SEC. 116. CIVIL FORFEITURE.

Section 310(e) (16 U.S.C. 1860(e)) is amended—

(1) by inserting "(1)" before "For purposes"; and

(2) by adding at the end the following:

"(2) For purposes of this Act, it shall be a rebuttable presumption that any fish that is a member of an anadromous species and is found on board a fishing vessel within the migratory range of that species is of United States origin."

SEC. 117. USE OF ENFORCEMENT PROCESS.

Section 311(e) (16 U.S.C. 1861(e)) is amended to read as follows:

"(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

"(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

"(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;

"(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for—

"(i) equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings; or

"(ii) equipping for law enforcement purposes any vessel, vehicle, or aircraft available for official use by the Secretary;

"(D) any valid liens or mortgages against any property that has been forfeited;

"(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

"(F) for the reimbursement of any Federal or State agency, including the United States Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

"(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation."

SEC. 118. NORTH PACIFIC FISHERIES RESEARCH PLAN.

Title III Section (16 U.S.C. 1851-1861) is amended by adding at the end the following:

"SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

"(a) **IN GENERAL.**—The North Pacific Fishery Management Council may prepare and submit to the Secretary a fisheries research plan which—

"(1) requires that observers be carried on board vessels of the United States engaged in fishing in that part of the exclusive economic zone which is within the geographical area of authority of the Council, for the purpose of collecting data necessary for the conservation and management of any fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery; and

"(2) establishes a system of fees to pay the costs of implementing the plan.

"(b) **STANDARDS.**—(1) Any plan prepared and submitted under this section shall be reasonably calculated—

"(A) to promote conservation and scientific understanding of the fisheries covered by the plan,

"(B) to be fair and equitable to all fishermen and fish processors affected by the plan, and

"(C) to be consistent with applicable provisions of law.

"(2) Any system of fees established by a fisheries research plan under this section shall—

"(A) provide that the total amount of fees collected may not exceed—

"(i) the cost of stationing observers on board fishing vessels pursuant to the plan, less

"(ii) any amount received for such purpose from any other source;

"(B) be fair and equitable to all participants in the fishery covered by the plan;

"(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan; and

"(D) not be used to offset amounts authorized under other provisions of law.

"(c) **RECEIPT OF PLAN BY THE SECRETARY.**—Not later than 60 days after the Secretary receives a research plan under subsection (a) from the Council, the Secretary shall—

"(1) review the plan to determine whether it meets the requirements of subsection (b), and

"(2)(A) reject the plan if it does not meet those requirements; or

"(B) conduct 2 public hearings to obtain comments on the plan, one of which shall be held in the State of Alaska and one of which shall be held in the State of Washington.

"(d) **ACTION BY THE SECRETARY.**—After analyzing comments received regarding a research plan under subsection (a), the Secretary shall, within 45 days after the last public hearing on the plan—

"(1) request the Council to respond within 45 days to the comments; and

"(2) implement the plan with any additional modifications provided by the Council which are consistent with subsection (b).

"(e) **RESUBMISSION OF PLAN.**—Any research plan rejected by the Secretary under subsection (g)(2) may be resubmitted by the Council with changes, and upon such resubmission shall be treated as an original plan.

"(f) **USE OF FEES.**—Amounts received by the United States in the form of fees established by a research plan under this section shall, after deducting an amount under subsection (g)(2), be available to the Secretary only for use for implementing the plan.

"(g) **AUTHORIZATION OF APPROPRIATIONS.**—(1) To carry out this section, including for the establishment of an observer program pursuant to this section, there are authorized to be appropriated to the Secretary (in addition to amounts made available by subsection (f)) \$100,000 for each of fiscal years 1990 and 1991.

"(2) Amounts appropriated under this subsection shall be reimbursed to the Treasury from fees collected pursuant to this section."

SEC. 119. CIVIL ACTIONS BY OBSERVERS.

Title IV (16 U.S.C. 1882) is amended by inserting before section 402 the following:

"SEC. 401. SPECIAL PROVISIONS REGARDING OBSERVERS.

"(a) **CIVIL ACTION.**—(1) An observer on a vessel (or the observer's personal representative) under the requirements of this Act that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

"(2) This subsection does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

"(b) **PLACEMENT OF OBSERVERS ON U.S. VESSELS.**—A vessel of the United States shall not be required under this Act to carry an observer on board if the facilities of the vessel for quartering of an observer, of for carrying out observer functions, as so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized."

SEC. 120. AUTHORIZATION OF APPROPRIATIONS.

Section 406 (16 U.S.C. 1882) is amended—

(1) by striking paragraph (1) and all that follows through paragraph (14);

(2) by redesignating paragraph (15) as paragraph (1); and

(3) by adding at the end the following:

"(2) \$75,000,000 for fiscal year 1990.

"(3) \$76,000,000 for fiscal year 1991.

"(4) \$77,000,000 for fiscal year 1992.

"(5) \$78,000,000 for fiscal year 1993."

SEC. 121. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) **INTERNATIONAL FISHERY AGREEMENTS.**—Section 202(e) (16 U.S.C. 1822(e)) is amended by striking "a exclusive economic zone" and inserting in lieu thereof "an exclusive economic zone".

(b) **FOREIGN FISHING PERMITS.**—Section 204(b)(4)(C) (16 U.S.C. 1824(b)(4)(C)) is amended by striking "council" and inserting in lieu thereof "Council".

(c) **COUNCIL PROCEDURAL MATTERS.**—Section 302(j)(4) (16 U.S.C. 1852(j)(4)) is amended by striking "council employee" and inserting in lieu thereof "Council employee".

(d) **ACTION BY SECRETARY.**—Section 304(c)(2)(B) (16 U.S.C. 1854(c)(2)(B)) is amended by striking "appropriate council" and inserting in lieu thereof "appropriate Council".

TITLE II—AUTHORIZATION OF ATLANTIC TUNAS CONVENTION OF 1975

SEC. 201. LIMITATIONS ON APPOINTMENTS OF COMMISSIONERS.

(a) **IN GENERAL.**—Section 3(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971a(a)), hereinafter in this title referred to as the "Act", is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) Of the Commissioners appointed under paragraph (1) who are not government employees—

"(A) 1 shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

"(B) 1 shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

"(3)(A) The term of a Commissioner shall be 3 years.

"(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than 2 consecutive terms as a Commissioner."

(b) **APPLICATION TO CURRENT COMMISSIONERS.**—

(1) **QUALIFICATION REQUIREMENT NOT APPLICABLE.**—Section 3(a)(2) of the Act (as amended by this title) shall not apply to reappointment of an individual as a United States Commissioner of the International Commission for the Conservation of Atlantic Tunas (hereinafter in this title referred to as a "Commissioner") if that individual is serving in that position on the date of the enactment of this title.

(2) **CURRENT TERM NOT CONSIDERED.**—An individual serving a term as a Commissioner on the date of the enactment of this title shall not, by reason of that term of service, be ineligible under section 3(a)(3)(B) of the Act (as amended by this title) for reappointment as a Commissioner.

SEC. 202. TERMINATION OF CURRENT TERMS AND COMPLETION OF PENDING APPOINTMENTS.

The term as Commissioner of each individual serving in that position on the date of the enactment of this title shall terminate June 30, 1990. Not later than that date, the President shall complete appointment (or reapportionment) of individuals to serve as Commissioners on and after that date.

SEC. 203. TRAVEL EXPENSES OF COMMISSIONERS.

Section 3 of the Act (16 U.S.C. 971a) is amended by adding at the end the following:

"(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

"(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection."

SEC. 204. TRAVEL EXPENSES OF ADVISORY COMMITTEE.

Section 4 of the Act (16 U.S.C. 971b) is amended by striking "On approval" and all that follows through the end of the section and inserting in lieu thereof the following: "The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code."

SEC. 205. REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS.

Section 6(c) of the Act (16 U.S.C. 971d(c)) is amended as follows:

(1) Paragraph (1) is amended—

(A) by inserting "(A)" before "Upon favorable"; and

(B) by adding at the end the following:

"(B) Not later than June 1, 1990, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission and with other agreements under the Convention between the United States and any nation which is a party to the Convention."

(2) Paragraph (3) is amended—

(A) in subparagraph (H) by striking "; and" and inserting in lieu thereof a semicolon; and

(B) by striking subparagraph (I) and inserting in lieu thereof the following:

"(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

"(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

"(K) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission."

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Act (16 U.S.C. 971h) is amended to read as follows:

"APPROPRIATIONS

"SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission

as provided in article X of the Convention, not more than \$1,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993."

SEC. 207. RECOMMENDED COMMISSION ACTIONS REGARDING LARGE-SCALE DRIFTNET FISHING AND CONSERVATION OF ATLANTIC SWORDFISH.

Section 6(d) of the Act (16 U.S.C. 971d(d)) is amended to read as follows:

"(d)(1) It is the sense of the Congress that at the 11th Annual Meeting of the Commission and thereafter, the Secretary, in consultation with the Secretary of State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(28) of the Magnuson Fishery Conservation and Management Act) in the Convention area.

"(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock."

TITLE III—AUTHORIZATION OF FISHERMEN'S PROTECTIVE ACT OF 1967

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking "October 1, 1989" and inserting in lieu thereof "October 1, 1991".

TITLE IV—REPLACEMENT, RECONSTRUCTION, OR MODIFICATION OF FISHING VESSELS

SEC. 401. CAPITAL CONSTRUCTION FUNDS.

(a) **IN GENERAL.**—Section 607(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1177(a)) is amended—

(1) by inserting "(1)" before "Any citizen";

(2) in the second sentence by striking "the purpose of" and all that follows through "the fisheries of the United States" and inserting in lieu thereof "any of the purposes described in paragraph (2)"; and

(3) by adding at the end the following:

"(2) The purposes referred to in paragraph (1) are—

"(A) providing replacement vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade of in the fisheries of the United States; and

"(B) purchasing equipment for or modifying a qualified vessel—

(i) to comply with requirements established under the Commercial Fishing Industry Vessel Safety Act of 1988 (46 U.S.C. 2101 note);

(ii) to comply with Federal environmental protection laws, including the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(iii) to comply with laws and regulations, including those relating to the safety of fishing vessels and the wholesomeness of seafood."

(b) **CONFORMING AMENDMENTS.**—Section 607(f)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1177(f)) is amended—

(1) in subparagraph (B) by striking "or" at the end;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following:

"(C) any of the purposes described in subsection (a)(2)(B); or "; and

(4) in the matter immediately following subparagraph (D) (as redesignated by paragraph (2) of this subsection) by striking "(C)" and inserting in lieu thereof "D".

(c) **AMENDMENT OF EXISTING AGREEMENTS.**—A person who is a party to an agreement with the Secretary of Commerce or the Secretary of Transportation in force under section 607 of the Merchant Marine Act, 1936, may amend that agreement to include any of the purposes described in section 607(a)(2)(B) of that Act (as amended by this section), by applying to that Secretary not later than 6 months after the date of the issuance of regulations under subsection (d) by that Secretary. Upon receipt

of such application, the appropriate Secretary shall amend the agreement to include those purposes.

(d) **ISSUANCE OF REGULATIONS.**—Not later than 6 months after the date of the enactment of this Act, the Secretary of Commerce, the Secretary of Transportation, and the Secretary of the Treasury shall issue regulations implementing this section.

TITLE V—MISCELLANEOUS

SEC. 501. PRESIDENTIAL ACTIONS REGARDING SEA TURTLE CONSERVATION.

The President shall, with respect to those species of sea turtles the conservation of which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of such species of sea turtles;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which, as determined by the Secretary of Commerce, may affect adversely such species of sea turtles, for the purposes of entering into bilateral and multilateral treaties with such countries to protect such species of sea turtles;

(3) encourage such other agreements to promote the purposes of this section with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of such species of sea turtles;

(4) initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section; and

(5) provide to the Congress by not later than one year after the date of enactment of this section—

(A) a list of each nation which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles,

(B) a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles, and

(C) a full report on—

(i) the results of his efforts under this section, and

(ii) the status of measures taken by each nation listed pursuant to subparagraph (A) or (B) to protect and conserve such sea turtles.

SEC. 502. NATIONAL MARINE FISHERIES SERVICE FACILITIES IN KODIAK.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Commerce shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate on the status of the National Marine Fisheries Service facilities located in Kodiak, Alaska. The report shall include—

(1) a description of the facilities, including their location and physical state;

(2) a discussion of any structural problems, including any need to remove asbestos from the facilities and to repair or upgrade electrical wiring;

(3) the number of full-time and part-time Federal employees using the facilities;

(4) a discussion of any problems associated with the location of the facilities, including inaccessibility during winter months due to icy road conditions;

(5) a projection of the costs of repairing the facilities to alleviate the problems identified under paragraph (2); and

(6) any proposals for the National Marine Fisheries Service utilizing different facilities within the boundaries of the Kodiak Island Borough and the costs associated with these proposals, including the costs associated with co-locating in facilities with the University of Alaska.

SEC. 503. COMPLETION OF APPOINTMENTS TO FISHERY MANAGEMENT COUNCILS.

Not later than 1 day after the date of the enactment of this Act, the Secretary shall complete all of the Secretary's appointments of members for the Regional Fishery Management Councils established by section 302(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(a)).

SEC. 504. ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLANS.

(a) **SUBMISSION OF AMENDMENT BY NEW ENGLAND COUNCIL.**—The New England Fishery Management Council is encouraged to submit to the Secretary of Commerce an amendment to the Atlantic Sea Scallop Fishery Management Plan, hereinafter in this section referred to as the "Plan". Any amendment submitted under this section shall—

(1) contain measures providing for the conservation and management of Atlantic sea scallops, that are not based on a scallop meat count but which may include controls on scallop harvesting effort; and

(2) consider the views of fishermen and fish processors involved in the Atlantic sea scallop fishery.

(b) **PREPARATION OF AMENDMENT BY SECRETARY.**—If no amendment is submitted under subsection (a) before one year after the date of the enactment of this Act, the Secretary of Commerce is encouraged to use his or her authority under section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) to prepare the amendment described in subsection (a).

(c) **NOT SYSTEM FOR LIMITING ACCESS.**—Any amendment prepared by the Secretary under subsection (b) is not a system for limiting access, for purposes of section 303(b)(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)(6)).

SEC. 505. SENSE OF CONGRESS REGARDING MANAGEMENT PLAN FOR ATLANTIC BLUEFISH.

It is the sense of the Congress that, in developing a management plan for the Atlantic bluefish fishery, the Atlantic States Marine Fisheries Commission and the appropriate Regional Fishery Management Councils should—

(1) ensure that current and reliable scientific data is used to develop a management plan;

(2) consider the traditional practices used in the fishery by commercial and recreational fishermen from different States; and

(3) prescribe appropriate conservation and management measures which take into account variability within the fishery related to local conditions and differences in habitat quality and other relevant factors.

SEC. 506. SENSE OF CONGRESS REGARDING ACTIONS OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.

(a) **FINDINGS.**—The Congress finds that—

(1) the Government of the United States has unique obligations to the residents of the Pribilof Islands, Alaska, under the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.);

(2) the Government of the United States, the State of Alaska, and the residents of the Pribilof Islands have made significant financial investments in order to create an economy on the Pribilof Islands that is not dependent on sealing;

(3) the commercial fishing industry is important to the economy of coastal communities in the State of Alaska, including the numerous small villages on the coast of Alaska adjacent to the Bering Sea; and

(4) residents of a number of different States participate in the Alaska fisheries.

(b) **SENSE OF CONGRESS.**—It is the sense of the Congress that the North Pacific Fishery Management Council should include in fishery management plans such measures as may be necessary to meet the economic needs of all individuals and communities which are dependent on the living marine resources in the exclusive economic zone off Alaska.

SEC. 507. SENSE OF CONGRESS REGARDING ATLANTIC SWORDFISH FISHERY MANAGEMENT PLAN.

It is the sense of the Congress that, with respect to the Fishery Management Plan for the Atlantic Swordfish Fishery—

(1) the Secretary of Commerce should reinstate joint jurisdiction of the plan under the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council;

(2) future amendments to the plan should consider all reasonable measures for the conservation and management of the Atlantic swordfish fishery; and

(3) in developing amendments to the plan, the Councils should consider information provided by the United States fishing industry.

SEC. 508. SENSE OF CONGRESS REGARDING THE FISHERY MANAGEMENT PLAN FOR COASTAL MIGRATORY PELAGIC RESOURCES (MACKERELS).

(a) **AMENDMENT OF PLAN BY COUNCIL.**—It is the sense of the Congress that the South Atlantic Fishery Management Council should develop an amendment or amendments to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (Mackerels), and that the Secretary should immediately thereafter commence to implement that amendment or amendments through regulations, to assure that if it becomes necessary to close the mackerel fishery during a predetermined season or under a quota at a time by which the fishermen of a region or State traditionally involved in the fishery have not had an opportunity in that season to participate to an equitable and traditional degree in that fishery, that such closure shall be fair and equitable to all fishermen involved in the fishery.

(b) **AMENDMENT OF PLAN BY SECRETARY.**—If no amendment is submitted under subsection (a) before 3 months after the date of enactment of this Act, the Secretary of Commerce is encouraged to use authority under section 304(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(c)) to prepare the amendment described in subsection (a).

SEC. 509. COAST GUARD AUTHORITY TO ENSURE FISHING VESSEL SAFETY.

(a) **IN GENERAL.**—Chapter 5 of title 14, United States Code, is amended by adding at the end the following:

“§ 95. Commercial fishing vessel safety.

“The Coast Guard is the Federal agency responsible for ensuring all aspects of safety relating to fishing, fish tender, and fish processing vessels and their crews and employees pursuant to chapters 21, 23, 31, 33, 41, 45, and other relevant provisions of title 46.”

(b) **CONFORMING AMENDMENT.**—The table of Contents for chapter 5 of title 46, United States Code, is amended by adding at the end the following:

“95. Commercial fishing vessel safety.”

Amend the title so as to read:

A bill to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal 1992, and for other purposes.

PURPOSE OF THE LEGISLATION

The purpose of the bill, H.R. 2061, is to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act (MFCMA) and the Atlantic Tunas Convention Act through fiscal year 1993, to authorize appropriations for Section 7 of the Fisherman's Protective Act through 1991, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The MFCMA was enacted on April 13, 1976 to provide for the conservation and management of important fishery resources found off the coast of the United States. It established a 197-mile Fishery Conservation Zone (FCZ), now referred to as the U.S. exclusive economic zone (EEZ), adjacent to what was then a three-mile territorial sea. The MFCMA established exclusive management authority for the United States over the fishery resources within the EEZ, except for highly migratory species (tuna).

In the decade preceding enactment of the MFCMA, the harvest of fish by U.S. fishermen remained relatively stable at about 2.1 million metric tons a year. In contrast, foreign fishermen more than doubled their catch off the U.S. coast. It has been estimated that this heavy foreign fishing—aided by modern, often heavily-subsidized fleets—led to the overfishing of at least ten commercial stocks (Alaska pollock, California sardines, haddock, halibut, herring, ocean perch, Pacific mackerel, sablefish, yellowfin sole and yellowtail flounder).

Sponsors of the MFCMA believed that extending U.S. fisheries jurisdiction out to 200 miles would effectively prevent the overfishing of important fish stocks through sound conservation and management practices.

To ensure that those who knew most about the fisheries were involved in designing sound fishery management practices, the MFCMA created eight Regional Fishery Management Councils with responsibility for developing fishery management plans for important fishery resources. These plans would identify, for each fishery, the optimum yield which could be harvested annually by U.S. and foreign fishermen, the total allowable level of foreign fishing and the rules governing the harvesting and landing of U.S. fishery resources by both U.S. and foreign fishermen.

Under the Act, the Secretary of Commerce is charged with the responsibility for reviewing and approving each management plan prepared by the Councils and for promulgating Federal regulations to implement the plans. The Secretary of State, in consultation with the Secretary of Commerce, has the responsibility for allocating among foreign nations the surplus fish not harvested by U.S. fishermen and for negotiating international fishery agreements.

COMMITTEE ACTION

H.R. 2061 was introduced on April 18, 1989, by Mr. Studds, Mr. Jones of North Carolina, Mr. Young of Alaska, Mr. Davis, Mr. Hughes, Mr. Carper, Ms. Schneider, Mr. Pallone, and Mr. Brennan. It was referred to the Committee on Merchant Marine and Fisheries. On April 26, 1989 the bill was referred to the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

HEARINGS

On May 2, 1989, in Washington, D.C., the Subcommittee conducted its first hearing on H.R. 2061. The purpose of this hearing was to outline the broad national issues that would be taken up during the reauthorization. Major issues identified during the hearing included the need to strengthen the conservation components of the MFCMA, the need to improve fisheries law enforcement, the lack of adequate funding and scientific data necessary for sound fisheries management, and the need for increased international cooperation to conserve U.S. fishery resources, particularly salmon. Testifying were Mr. James Brennan, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration; Ambassador Edward E. Wolfe, Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State; Rear Admiral Ted Leland, Chief of the Office of Law Enforcement and Defense Operations, U.S. Coast Guard; the Chairpersons of the eight Regional Fishery Management Councils; Mr. Lynn Greenwalt, Vice President, International Affairs, National Wildlife Federation; and Mr. Benjamin T. Hardesty, President, Durham Sporting Outfitters Inc.

On May 8, 1989, the Subcommittee held a field hearing in Boston, Massachusetts. Of particular concern to the Subcommittee at this hearing was the depressed condition of the groundfish stocks on Georges Bank and in the Gulf of Maine and whether this situation was the result of inadequacies in the MFCMA, ineffective

fishery management plans developed by the New England Council, or other factors. Other issues identified were the need for better law enforcement, the possibility of repealing certain federal financial assistance programs for the fishing industry, the lack of scientific data necessary for management, and the need to find effective methods to control fishing effort. Testifying were Massachusetts State Representative Frank Hynes; Mr. Richard Allen, Atlantic Offshore Fishermen's Association; Mr. Bill Gordon, American Fisheries Society; Mr. Harvey Mickelson, New Bedford Seafood Dealers Association; Mr. Lester Smith, Atlantic Sportfishing Association; Mr. Jim Warren, New England Fishery Management Council Groundfish Committee; Mr. Joe Brancalone, Cape Ann Vessel Association; Mr. James Costakes, New Bedford Seafood Producers Association; Mr. Barry Gibson, New England Fishery Management Council Member; Mr. Jeff Kaelin, Maine Sardine Council; Mr. Howard W. Nickerson, Offshore Mariners Association; and Miss Lucy Sloan, Point Judith Fishermen's Cooperative. In addition, a technical panel consisting of Dr. Vaughn Anthony, National Marine Fisheries Service, Lieutenant Commander William Chappell, U.S. Coast Guard, and Mr. David Borden, Chairman, New England Fishery Management Council, responded to questions from the Subcommittee.

On July 20, 1989, the Subcommittee held its third hearing on H.R. 2061 in Washington, D.C. Also considered during this hearing were H.R. 2841, a bill reauthorizing the Fishermen's Protective Act, and H.R. 2842, a bill reauthorizing the Atlantic Tunas Convention Act. The major purpose of the hearing was to investigate U.S. policy towards the conservation and management of tunas and other highly migratory species such as swordfish and marlin and to review the adequacy of U.S. law in this regard. Also of concern to the Subcommittee were proposed changes to the Atlantic Tunas Convention Act in connection with reauthorizing that law. Testifying were Ambassador Edward Wolfe, Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State; Mr. Carmen Blondin, Deputy Assistant Administrator for International Interests, National Oceanic and Atmospheric Administration, U.S. Department of Commerce; Mr. David Burney, United States Tuna Foundation; Mr. Ken Hinman, Executive Director, National Coalition for Marine Conservation; Ms. Rebecca Phillips, Merritt Seafood; Mr. Steve Moreton, East Coast Tuna Association and Mr. August Felando, American Tunaboat Association.

CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY SPECIES

As mentioned above, the U.S. did not extend its management authority over highly migratory species when the MFCMA was enacted in 1976. Of particular interest to the Committee during the MFCMA reauthorization this year was the adequacy of U.S. policy towards the conservation and management of tuna and other highly migratory species such as swordfish and marlin. While the U.S. claims management authority over some species of fish biologically considered as highly migratory (marlin, swordfish, and shark) it continues to exempt from the MFCMA other highly migratory species defined in the statute as species of tuna. The Sub-

committee on Fisheries and Wildlife Conservation and the Environment's hearing on July 20th provided an opportunity to review several questions central to this policy:

Should the U.S. maintain its long-standing position that it does not claim and does not recognize the claims of other nations to exclusive management authority over tuna?

Does the exclusion of tuna unduly complicate the ability of the U.S. to manage and conserve other highly migratory species such as swordfish, billfish, and marlin?

Does the current U.S. management regime provide adequate authorities for the effective conservation of highly migratory species other than tuna?

How should the U.S. reconcile its policy towards highly migratory species with international conservation agreements?

From testimony received by the Committee it is clear that the so-called "tuna exemption" continues to be highly controversial. In general, the domestic tuna industry, including the distant water fleet, strongly opposes any effort to include tuna in the MFCMA. The domestic tuna harvesters oppose such a move because it would authorize the Regional Fishery Management Councils to regulate their activities. West coast tuna fishermen oppose the change because they believe their fishing vessels would be denied access to important fishing grounds within the 200 mile fishery zones of countries along the eastern Pacific coast. Also, the tuna industry argues that canneries in Puerto Rico and American Samoa would be forced to close due to the anticipated reduction in tuna catches caused by a change in the juridical position. The industry also contends that effective tuna management is impossible to achieve by a single coastal state and that international agreements provide the sole basis for sound management.

The Administration supports the positions of the commercial fishing industry and testified against a change in the juridical position at the hearing on July 20th. The Department of State believes that the current tuna policy has been particularly helpful in negotiations on international tuna agreements.

Recreational fishermen, on the other hand, strongly support the inclusion of tuna primarily for conservation purposes. Historically, recreational anglers have criticized what they regard as the slowness and ineffectiveness of international management regimes. For example, Atlantic bluefin tuna were severely overfished in the 1970's as a result of inaction by the international commission (the International Commission for the Conservation of Atlantic Tuna) created to manage this species. The recreational fishing community believes that strong unilateral action by the U.S. in the conservation of tuna would not only help conserve tuna but help encourage other nations to adopt strong conservation measures. In addition, these anglers contend that the tuna exemption has made the conservation and management of other highly migratory species like swordfish extremely difficult and that the only way to rectify this problem is to include tuna under the MFCMA.

A majority of the Regional Fishery Management Councils supported including tuna so that they would be able to manage these species. The councils expressed concern about the inconsistency of the U.S. management policy towards highly migratory species cre-

ated by excluding tuna. Moreover, several Councils argued that the tuna exemption is preventing them from fulfilling their mandate under the MFCMA to conserve and manage other highly migratory species such as swordfish. A minority of the Councils supported the existing law's provisions on tuna.

WEST COAST HEARINGS

On August 8, 1989, in Seattle, Washington, the Subcommittee held its second field hearing. The purpose of this hearing was to examine a number of issues including: high seas driftnet fishing and its effect on U.S. origin Pacific salmon; the need for improved fisheries law enforcement; the lack of scientific data on which to base management plans; the need for observers on fishing vessels; the effectiveness of the MFCMA in protecting fishery habitat; and the need to strengthen the conservation provisions of the MFCMA. Testifying were Mr. Zeke Grader, Pacific Coast Federation of Fishermen's Associations Inc.; Mr. Arni Thomson, Alaska Crab Coalition; Mr. Doug Gordon, American High Seas Fisheries Association; Mr. Edward Evans, Alaska Factory Trawler's Association; Mr. Alan Reichman, Greenpeace; Mr. John Roos, Pacific Seafood Processors Association; Mr. Ted Smits, North Pacific Fishing Vessel Owner's Association; Mr. Barry Fisher, Midwater Trawlers Cooperative; Mr. Bob Alverson, Fishing Vessel Owners Association, Inc.; Mr. Jim Harp, Northwest Indian Fisheries Commission; and Mr. Greg Peterson, Puget Sound Gillnetter's Association. a technical panel consisting of Coast Guard Lieutenant Commander Michael Shidle, Dr. William Aron, National Marine Fisheries Services, Mr. John Peterson, Chairman, North Pacific Fishery Management Council, and Mr. Richard A. Schwarz, Chairman, Pacific Fishery Management Council responded to questions from the Subcommittee. On August 11, 1989, in Anchorage, Alaska, the Subcommittee held its final field hearing. Most of the issues discussed were the same as those at the Seattle field hearing. Testifying were the Honorable Tom Fink, Mayor of Anchorage; the Honorable Steve Cowper, Governor of the State of Alaska; Senator John Binkley, Alaska State Senate; Ms. Kate Graham, United Fishermen of Alaska; Christine Blackburn, Alaska Groundfish Data Bank; Mr. Ron Hegge, Alaska Longline Fishermen's Association; Mr. Jeff Stephen, United Fisherman's Marketing Association; Mr. Ron Philemonoff, Central Bering Sea Fisherman's Association; Mr. Joe Plesha, Trident Seafoods; Mr. Henry Mitchell, Bering Sea Fishermen's Association; Ms Kathryn Troll, Southeast Alaska Seiner's Association; and Mr. Clem Tillion, U.S. Commissioner to the International North Pacific Fisheries Commission. A technical panel consisting of U.S. Coast Guard Vice Admiral Carl T. Luck and Mr. Clarence Pautzke, Executive Director of the North Pacific Fishery Management Council responded to questions from the Subcommittee.

SUBCOMMITTEE VOTE

On September 19, 1989, the Subcommittee met to consider H.R. 2061. A motion offered by Mr. Studs and Mr. Young was adopted making in order an amendment in the nature of a substitute to be

considered as original text. The substitute contained a number of amendments to the MFCMA that had been recommended to the Subcommittee during the hearing on H.R. 2061. It also incorporated provisions from several other bills referred to the Subcommittee including:

H.R. 1434—a bill imposing new civil penalties for vandalizing fishing gear (introduced by Rep. Hughes);

H.R. 1554—a fisheries research fee bill (Rep. Young of Alaska);

H.R. 1647—a bill making assault of a fishery observer a criminal offense (Rep. Unsoeld);

H.R. 3100—a bill strengthening fishery law enforcement (Rep. AuCoin); and

H.R. 3101—a bill to reauthorize the MFCMA (Rep. Davis).

In addition, the amendment included the full text of H.R. 2841, a bill reauthorizing section 7 of the Fishermen's Protective Act, and H.R. 2842, a bill reauthorizing the Atlantic Tunas Convention Act.

During the Subcommittee's consideration of the substitute, the following amendments were adopted by voice vote:

Various technical amendments offered en block by Mr. Studds and Mr. Young.

Two amendments to the MFCMA offered by Mr. Hughes, the first requiring the Regional Fishery Management Councils to establish fishing industry advisory committees and the second requiring that individuals nominated for membership on the Councils be experienced in fisheries matters;

An amendment to the MFCMA offered by Mr. Bosco requiring the Councils to provide interested parties an opportunity to respond to new scientific data prior to the Council using this information for management purposes;

An amendment offered by Mrs. Unsoeld directing the Secretary of State to negotiate an international ban on large-scale driftnet fishing on the high seas;

An amendment offered by Mr. Solarz expressing U.S. support for the Tarawa Declaration and other efforts to achieve a ban on driftnet fishing; and

An amendment offered by Mr. Pallone urging the Atlantic States Marine Fisheries Commission to use the newest reliable scientific data in developing a bluefish management plan and to consider traditional fishing practices when prescribing conservation measures.

In addition, an amendment offered by Mrs. Saiki and Mr. Pallone, to repeal section 102, the "tuna exemption" of the MFCMA was defeated by voice vote.

The bill as amended was then reported favorably to the full Committee by voice vote.

FULL COMMITTEE VOTE

On November 5, 1989, the Committee on Merchant Marine and Fisheries met to consider H.R. 2061.

During the Committee's consideration, the following amendments were adopted by voice vote:

Various technical amendments offered en bloc by Mr. Jones, Mr. Studds, and Mr. Young that (1) clarify the meaning of the terms "migratory range" and "high seas" as used in the MFCMA; (2) clarify the consultation requirements of that Act for approving joint venture operations in internal waters; and (3) modify the national policies of the MFCMA to emphasize the importance of avoiding wasteful fishing practices;

Three amendments to the MFCMA offered by Mr. Jones (1) expressing the sense of Congress that quotas and seasons in the king mackerel fishery should be set on a fair and equitable basis for all fishermen throughout the range of the species; (2) providing that legal challenges against certain fisheries regulations may be filed within 30 days after the date of implementation of those regulations; and (3) correcting typographical errors;

An amendment to the MFCMA offered by Mr. Studds emphasizing the need for effective international conservation and management of swordfish and billfish;

Two amendments to the MFCMA offered by Mr. Young (1) allowing the North Pacific Regional Fisheries Management Council, rather than the Secretary, to prepare a fisheries research plan for the region and tightening the standards against which the research plan shall be judged; and (2) expressing the sense of Congress that the North Pacific Council should include measures in management plans that take into account the needs of coastal communities dependent of fishery resources;

An amendment offered by Mr. Hughes and Mr. Saxton expressing the sense of Congress that the Secretary of Commerce should reinstate the Atlantic Swordfish Fishery Management Plan as a multi-council plan;

An amendment offered by Mr. Saxton and Mr. Hughes expressing the sense of Congress that international swordfish conservation and management measures should be established comparable to those regulating U.S. fishermen, as modified by an amendment offered by Mr. Studds calling for the establishment of an international minimum harvest size for those species;

Two amendments offered by Mr. Bosco (1) amending the MFCMA to require the consideration of temporary adjustments in fishing seasons due to weather conditions; and (2) striking language in H.R. 2061 that would have amended section 301 of the MFCMA regarding conservation standards for fishery management plans;

An amendment offered by Mr. Ortiz and Ms. Schneider striking title IV of the bill, thereby maintaining the ability of the fishing industry to participate in the Capital Construction Fund and the Vessel Obligation Loan Guarantee Program;

An amendment offered by Mr. Miller allowing funds in the Capital Construction Fund to be used to help fishermen comply with federal environmental and safety laws;

An amendment to the MFCMA offered by Mrs. Unsoeld and Mr. Miller to alter the makeup of the North Pacific Fishery Management Council to add two more seats from Washington

and one more seat from Oregon, as modified by an amendment offered by Mr. Hughes reducing from two to one the number of seats to be added from Washington;

An amendment to the MFCMA offered by Mr. Brennan and Mr. Studds making it illegal to offer for sale a lobster that could not have been harvested legally under applicable U.S. harvesting laws;

An amendment offered by Mrs. Saiki and Mr. Pallone to repeal section 102, "the tuna exemption" of the MFCMA; and

An amendment offered by Mr. Tauzin calling upon the President to negotiate international agreements that would require foreign shrimp fishermen to comply with sea turtle conservation regulations comparable to those in effect in the United States.

In addition, an amendment offered by Mr. Tauzin prohibiting the Secretary of Commerce from requiring shrimp fishermen to use turtle excluder devices until a study of the benefits of those devices is completed, as modified by an amendment offered by Mr. Hutto requiring that the study be completed within one year, was defeated on a roll call vote (15 ayes, 22 nays).

The bill, H.R. 2061, as amended, was then ordered reported favorably to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1

This section cites the short title of the bill as the "Fishery Conservation Amendments of 1989."

TITLE I—AMENDMENTS TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Section 101

This section stipulates that references to sections or other provisions in this title are deemed to be references to the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Section 102

Subsection (a) adds a new paragraph to the findings section of the MFCMA stating that the collection of statistically reliable scientific data is essential to the effective conservation and management of fishery resources. This language complements other new provisions discussed below dealing with the collection of data and the use of observers.

Subsection (b) expands the purposes of the MFCMA to encourage international conservation and management of swordfish and billfish.

Subsection (c) adds two new policy statements to the MFCMA. The first states that conservation and management measures should consider the effects of fishing on immature fish and should avoid unnecessary waste of fish. This provision was included in recognition of the North Pacific Fishery Management Council's efforts to develop conservation and management measures dealing with the practice of "roe-stripping," that is, harvesting fish only for the

purpose of utilizing eggs. While the Committee makes no judgment on the practice, the Committee believes that this language provides the Council with authority to address the issue. Further, the Committee does not intend by this language to preclude fishing operations which of necessity harvest other than target species.

The second policy statement makes clear the intent of the Committee that the practice of large-scale driftnet fishing on the high seas beyond the exclusive economic zones of coastal nations should be ended by international agreement as soon as possible. The Committee also recognizes efforts being made by the U.S. Department of State to support the Tarawa Declaration calling for an end to large-scale driftnet fishing in the South Pacific ocean.

Section 103

This section adds new definitions to the MFCMA for "large-scale driftnet fishing," "migratory range," and "waters of a foreign nation" and makes an appropriate conforming amendment.

In defining "migratory range," the bill strikes a balance between those who believe that the presence of a single fish indicates the limits of a species' range and those who believe that the range of a species is delineated only by large numbers of fish being present at all times. The Committee intends that the term include all waters where fish of a particular species might reasonably be expected to be found, based on scientific data, during any time of the year, except for those areas which are located in the waters of a foreign nation.

Section 104

This section deletes from the MFCMA the exclusion for highly migratory species of fish and requires the Secretary of State to seek to renegotiate any international agreements that might be inconsistent with this section.

Section 105

This section amends the MFCMA by deleting the existing "phase-out" option for determining the total allowable level of foreign fishing (TALFF). TALFF will henceforth be determined by subtracting potential domestic harvest and any necessary reserve amounts from the optimum yield of a fishery. The remainder will be considered as TALFF.

Section 106

This section carries out the objective specified in section 102(b) of the bill by requiring the Secretary of State, at the request of and in cooperation with the Secretary of Commerce, to negotiate international agreements for the conservation of swordfish and billfish. The Committee does not intend by this amendment to affect the traditional foreign policy responsibilities of the Secretary of State nor to upset any existing international agreements to which the United States is a party. By adding this new provision the Committee recognizes that international fishery agreements are critical to the conservation and management of swordfish and billfish, just as they are for anadromous and highly migratory species.

Section 107

Subsection (a) establishes a new method of determining foreign fishing fees by giving the Secretary of Commerce, after consultation with the Secretary of State and any appropriate Regional Fishery Management Council, the authority to establish reasonable fees to be paid by foreign vessels fishing in the exclusive economic zone. The Committee notes that current law requires the Secretary, when establishing the level of fees for foreign fishermen, to use a formula involving a number of variables. The purpose of this section is to simplify this process and provide some flexibility to the Secretary when determining fee levels. The Committee expects that fees authorized by this section will be reasonable and will be set at a level that will maximize benefits to the U.S. fishing industry. The Committee also notes that fees for foreign vessels engaged in joint fishing ventures with United States fishermen have normally been set at a level equal to the cost of processing and issuing fishing permits; the Committee does not intend that this practice change since joint ventures are essential to the continued development of the United States fishing industry.

Subsection (b) repeals section 204(b)(12) of the MFCMA in order to combine its provisions with new language applicable to United States fishermen. Repeal of this paragraph is not intended to affect any enforcement action that is underway on the date of enactment.

Section 108

This section requires the Secretary of State to initiate negotiations with other nations in order to achieve an international ban on large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation. Large-scale driftnet fishing has been identified as a serious environmental and fisheries management problem in many regions, including most recently the South Pacific ocean. The Committee expects the Secretary to take the initiative to begin negotiations on a world-wide ban as soon as possible, using existing international forums, to the extent practicable, to achieve this end.

The Committee notes that a request has been received from the Governor of the Commonwealth of the Northern Mariana Islands that any ban include the high seas adjacent to those islands. The Committee expects the Secretary to be aware of this request.

Section 109

Section 109 makes a number of very important changes to section 302 of the MFCMA regarding the operations of the Regional Fishery Management Councils. The Committee has frequently made clear its support for the Council system and has—on more than one occasion—rejected proposals to weaken the Councils. Thus, the Committee expects Governors and the Secretary to act responsibly when nominating and appointing Council members. The MFCMA sets out clear criteria for service as a Council member. The Committee expects these criteria to be followed.

At the same time, the Councils have an equal obligation to act responsibly and fairly. During its hearings, the Committee received numerous allegations that Councils had made decisions that unfair-

ly favored one group of fishermen over another. While there will always be disagreements among various user groups, the Committee is concerned about the number of complaints received concerning biased or unfair Council decisions. The Committee urges the Councils to redouble their efforts to ensure fairness in their actions. The Committee is also concerned about the lack of support for the Councils from the Secretary of Commerce. In the view of the Committee, the current "laissez faire" attitude of the Department towards the Councils may have contributed to the development of management plans which would have been stronger if the Department of Commerce had participated and contributed more actively. This situation is most apparent in the New England groundfish fishery. The Committee urges the Secretary to actively work with the Councils—rather than against them—in developing the kind of strong conservation and management plans envisioned by the Act.

The strength of the national fishery conservation and management system lies in the Regional Fishery Management Councils to which the Act gives full responsibility for fishery management planning for species within the Councils' jurisdiction. The strength of the Councils lies in the support provided by those affected by Council actions and the Secretary of Commerce. The Committee expects the Governors, the Secretary, the Councils, and resource users to consider these facts as they carry out their respective obligations under the MFCMA.

Subsection (a) of section 109 changes the size of the North Pacific Fishery Management Council by adding two additional seats: one to be held by a resident of the State of Washington and one to be held by a resident of the State of Oregon. The Committee intends that, to the extent possible, the Secretary makes appointments to these new seats at the same time as appointments are made to existing seats, in order to provide the least disruption to the Council process.

Subsection (b) makes two changes to the qualification criteria for Council members. First, section 302(b)(2)(A) is amended to emphasize the need for knowledge and experience on the part of Council members. The Committee expects Governors to adhere to this requirement when making nominations. Further, the Committee intends that the Secretary also apply this criteria strictly against Council nominees. If a nominee fails to meet the criteria, the Committee expects the Secretary to reject the nominee, regardless of political or other considerations.

The Committee does not intend to preclude the appointment of an individual who has gained knowledge or experience in fisheries conservation and management through direct participation in and contribution to fisheries conservation and management. Thus, an individual should be considered qualified for Council membership as a result of an active leadership role in a fisheries organization whose members participate in a fishery under that Council's jurisdiction.

The second change made by this subsection requires the Secretary to make a serious effort to ensure that the commercial fishing industry is fairly represented on each Council. The Committee has received frequent complaints that certain Councils are composed in

the majority of those with recreational or other interests, thereby depriving those who depend on the fisheries for their livelihood of a voice in the management of those fisheries. This amendment is designed to correct that problem.

The Committee considered requiring Governors to include at least one commercial fisheries representative whenever a list of Council nominees is forwarded to the Secretary. However, the Committee notes that—in fairness—recreational interests should receive the same treatment. After deliberation, the Committee rejected the suggestion that this proposal be incorporated into the statute and instead will exercise its oversight authority to ensure that the Councils are fairly balanced.

Finally, paragraph (2) of this subsection makes clear that the amendments apply only to appointments or reappointments made after the date of enactment of this Act. However, if there are sitting Council members who cannot meet these criteria, the Committee expects that Governors will not re-nominate them, nor will the Secretary consider them, when their current terms expire.

Subsection (c) limits Council members to 2 consecutive terms. The Committee adopted this language in order to encourage fair representation on the various Councils. At the same time, the Committee recognizes the contributions to fisheries conservation and management made by individuals who have served more than two terms as Council members. Therefore, there remains no limit on the absolute number of terms that a member may serve. Thus, a Council member could serve two consecutive terms, wait out a year, and then serve two more consecutive terms. It is hoped that this amendment will bring more fishermen into the Council process and thereby advance the national conservation and management program.

The Committee intends that the two term "count" begin at the start of a Council member's first appointment after January 1, 1986. For example, a Council member appointed in 1986 would start the first of the two terms then, regardless of how many terms were served before 1986. Under the same rules, a Council member appointed in 1985 would not start that "count" until 1988, since this would be the first appointment after January 1, 1986, and thus would be able to serve until 1994.

Subsection (d) modifies the compensation available for Council members and Council staff. Members' compensation is set at \$200 per day, plus expenses, for any member appointed or reappointed after January 1, 1990. Thus, currently serving members would receive compensation at the new level if they are reappointed in the future.

This subsection also allows Council staff to be reimbursed for actual expenses when engaged in Council business. The Committee recognizes that participation by staff is often necessary at Council meetings and has adopted this language to allow staff to travel to Council meetings when needed.

Subsection (e) allows Councils to meet outside of their geographical areas of concern. This amendment was adopted in recognition of the fact that fishermen in one region may be directly affected by decisions of the Council from another region. This amendment will allow a Council when appropriate to accommodate the interests of

all the affected fishermen by meeting in States outside geographical area of direct concern to the Council.

The Committee does not intend by this amendment to give Councils unlimited authority to meet where they choose, in warm climates during the colder winter months. The amendment was adopted solely to allow a reasonable opportunity for fishermen to participate in the Council process, especially when a Council is making decisions that affect the livelihoods of fishermen. The phrase "appropriate times and places" should be interpreted strictly by the Councils and the Secretary.

Further, the Committee is aware that Fishery Management Teams organized by the North Pacific Fishery Management Council meet most frequently in the State of Washington. Some language in this subsection was adopted in large part at the request of fishermen from the State of Washington, the Committee expects the North Pacific Council to give consideration to the needs of fishermen from the State of Alaska by scheduling Plan Team meetings in Alaska.

Subsection (f) requires each Council to establish a fishery advisory committee which provides fair representation of commercial fishing interests in the Council's area of concern. The Committee recognizes that some Councils, such as the North Pacific Fishery Management Council, already have advisory committees that would satisfy this requirement. This amendment is not intended to change existing advisory committees where they meet the general criteria established here; rather, it is meant to impose a requirement on those Councils—such as the Mid-Atlantic Fishery Management Council—that currently have no such advisory committees.

This subsection also makes clear that recommendations from advisory committees and scientific committees are advisory, not mandatory, in nature. The Congress created the Regional Fishery Management Councils to provide conservation and management direction for our nation's fisheries; that authority is not meant to be delegated to advisory committees.

Subsection (g) modifies the Councils' responsibilities regarding fisheries habitat concerns. In the case of state or federal activities that, in the view of a Council, affect the habitat of anadromous species under the Council's jurisdiction, the Council is required to provide timely comments concerning such activity. In addition, the agency to which comments are addressed must provide a timely response, including detailed information on the measures that will be taken to address the concerns of the Council. This provision is in direct response to the concerns of salmon fishermen and is intended to increase the Council's participation and influence in decisions affecting habitat concerns and the survival of anadromous species.

Subsection (h) allows a Council to conduct closed meetings if prior public notice is given. Under existing law, a Council must arrange the publication of a closure notice in appropriate newspapers. The change made by this subsection allows a Council simply to notify newspapers and leave publication of the notice to the discretion of the journals. The amendment also allows a Council

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cil to conduct a brief closed meeting to discuss employment or internal administrative matters only without prior notification.

These changes are made in recognition of the need for efficiency in operations, not as an endorsement of secrecy in Council work. The Committee intends that the Council process continue to be an open one and that closed meetings be held only when absolutely necessary.

Subsection (i) requires a Council to provide time for review of all relevant information presented prior to the point when conservation and management decisions are made. The Council process should be open to all participants and data should be subject to appropriate public review. While a Council must still make its decisions based on the best available scientific data, such data is not the exclusive domain of state or federal scientists. Thus, the Committee expects the Councils to give appropriate weight to data submitted by fishermen and processors. Further, such data should not be subject to tests more stringent than that submitted by the National Marine Fisheries Service or marine fisheries officials from any state.

Section 110

Subsection (a) modifies certain provisions that a fishery management plan must contain and adds an additional provision. First, it requires that plans provide for temporary access to a fishery when normal access is denied due to unexpected weather or ocean conditions. Obviously, this provision will not be applicable in every fishery. However, for those fisheries that operate under strict time or seasonal closures, such temporary access should be made available as long as an adjustment will not adversely affect conservation measures for other fisheries. Thus, where a temporary adjustment might be made in a salmon troll fishery, a similar adjustment might not be necessary in a longline, pot, or trawl groundfish fishery that harvests a mixture of species.

Second, this subsection requires plans written or amended after January 1, 1991, to specify the type of data needed to conserve and manage the fishery. Inclusion of this information will provide guidance to the Councils and the Secretary on research priorities. In addition, it will serve as advance notice to fishermen and processors that additional data gathering efforts may be needed in certain fisheries.

Subsection (b) amends the MFCMA in regard to discretionary provisions for fishery management plans. First, it expands the current permit and fees provisions to allow a plan to require that fishing vessel operators and fish processors—in addition to fishing vessels—obtain a permit from the Secretary as a conservation and management measure. The requirement for fish processors is limited to processors first receiving fish; thus, a wholesaler, broker, or secondary processor who purchases fish that has already passed through the hands of other processors would not be covered by this provision.

Second, this subsection allows the Councils to require processors to submit data necessary for the conservation and management of a fishery. However, this amendment does not allow the Councils to seek economic data that is pertinent solely to the private business

of a processor. The Committee notes that fishermen are already subject to this requirement, as well as to the permit requirement noted above, and believes that the national conservation and management program will be improved by allowing the Councils to seek fishery resource information from processors as well as fishermen.

Third, this subsection allows the Councils to require that observers be carried on board domestic fishing vessels for data collection purposes. The Committee notes that the Councils already have—and have used—such authority; the amendment makes the authority explicit.

Subsection (c) allows state employees in limited circumstances to gain access to raw data submitted by fishermen and processors under the requirements of the MFCMA. This authority already exists for federal officials and certain Council staff. State employees are included in recognition of the cooperative role that states play in conserving and managing interjurisdictional fisheries. However, the Committee intends that data be made available to state employees only on a "need to know" basis and only after an agreement has been reached between the Secretary and the Governor which prevents public disclosure of any data supplied to the state.

Section 111

Subsection (a) includes certain technical and conforming amendments to the MFCMA to accompany the changes made by the Fishery Conservation Amendments of 1989.

Subsection (b) modifies the MFCMA as it applies to judicial review of management actions. Under current law, a management plan or regulation can only be challenged in court within 30 days after publication in the Federal Register. Since some management regulations are prospective, this prevents interested parties from challenging those regulations at the time they are actually implemented. The amendments made by this subsection will allow a challenge within 30 days of the time that a regulation is implemented. Further, this subsection provides for expedited consideration of those challenges. This language is a direct response to a portion of the decision of the Fourth Circuit Court of Appeals in *Kramer and the State of North Carolina v. Verrity*.

Subsection (c) prohibits the National Marine Fisheries Service regional director from participating in a Council vote requesting emergency action by the Secretary. The Committee has found that the Secretary has ordered the NMFS regional director to vote "no" or to abstain in all emergency action requests. This policy deprives regional directors of their ability to exercise their independent judgment about the merits of a particular case and thereby eliminates any rationale for their voting. The Committee nevertheless encourages regional directors to participate in discussions leading up to a vote. The Committee also continues to expect the Secretary to respond to Council requests for emergency actions in accordance with the MFCMA.

The Committee also notes that the Secretary has often denied regional Councils a legal opinion on management plans and amendments that are under consideration by the Councils. NOAA personnel are included as voting members of the Councils for the express

purpose of coordinating Council and Federal government action in fisheries management. It is the Committee's strong belief that the Secretary or his designee should provide a legal opinion to a Regional Fishery Management Council when one is requested.

Section 112

This section modifies section 306(c) of the MFCMA in a number of ways to improve the coordination of internal water processing operations.

First, this section requires that an application submitted for an internal waters operation include sufficient information regarding the species that will be processed. This is done to make sure that all of those who are reviewing the application know which species will be affected.

In addition, this section imposes an additional condition on the Governor of a state who is considering an internal waters processing application. If the application is for a fishery which occurs in the waters of more than one state or in the waters of a state and in the Exclusive Economic Zone, the Governor must consult with the appropriate Regional Fisheries Management Council and Marine Fisheries Commission and must consider comments received from the Governor of any other state before approving the application. This language is included to ensure that all participants in an interjurisdictional fishery will have an opportunity to comment on an internal waters application, thus providing additional protection against overfishing a particular stock of fish.

The Committee notes that fisheries which occur solely in the waters of an individual state are not subject to the new consultation requirements. In addition, nothing in this section changes the authority of a Governor to assess the capacity of fish processors in the state and the extent to which those processors will use that capacity to process fish in a fishery for which an internal waters processing application has been filed.

Section 113

Subsection (a) of this section amends section 307 of the MFCMA by making it a specific violation of the Act to sell or possess any whole live or frozen lobster that does not conform to the U.S. lobster conservation program. This provision is intended to enhance lobster conservation efforts by making it illegal to sell or possess under-sized or egg-bearing lobsters in the U.S.

The keystone of the American Lobster Fishery Management Plan is the minimum size requirement. While the U.S. has increased the minimum lobster size to improve conservation of the resource, Canada has not. Currently, large numbers of under-sized or "short" lobsters are harvested in Canada and imported for sale in the U.S. market. Since it is virtually impossible to tell whether these lobsters were harvested legally in Canadian waters or illegally in the U.S., law enforcement efforts are made much more difficult and U.S. conservation efforts are undermined. By requiring all lobsters sold in the U.S. to conform to federal standards as described in the American Lobster Fishery Management Plan, both law enforcement and conservation measures will be more effective. Further, the Committee believes that this provision is clearly con-

sistent with the Free Trade Agreement between the U.S. and Canada and with the General Agreement on Tariffs and Trade.

Subsection (a) also establishes as a violation of the MFCMA the act of stealing, removing, or tampering with fishing gear owned by another person if it is done knowingly and without authorization. It is not the Committee's intent to discourage fishermen from bringing back to port lost or abandoned gear. Nor is it the Committee's intent to prevent fellow fishermen from retrieving each other's fishing gear when asked by the owner of that gear to do so. Instead, this provision is aimed at those situations where fishermen or other individuals intentionally steal or damage fishing gear or the fish contained in that gear owned by other fishermen.

This subsection also makes it a violation of the MFCMA to assault, oppose, or interfere with an official observer placed on a fishing vessel, including an observer serving on a contract basis. Lastly, this subsection makes it a violation of the MFCMA for any U.S. citizen to engage in large scale driftnet fishing. This prohibition applies to U.S. citizens in the EEZ as well as on the high seas beyond the EEZ. It is not intended, however, to apply in state waters and is not to be construed as preempting the authority of states to manage fisheries in state waters. Further, the Committee does not intend by this language to establish a precedent of the Congress prohibiting certain types of fishing gear. Gear use should be regulated by the Councils and the states as appropriate. The Congress is taking this extraordinary action in regard to large scale driftnet fishing gear solely in recognition of the overwhelming domestic and international interest in the conservation of marine resources.

Subsection (b) adds a provision to section 307 of the MFCMA concerning the violation of international fishery agreements between the U.S. and other nations. If a U.S. fishing vessel is fishing in the waters of a foreign nation, contrary to the terms of an international fishery agreement with that country, such a violation will be treated as a violation of the MFCMA. The Committee is aware of enforcement problems between the United States and Canada along the western Atlantic maritime boundary. This provision is intended to encourage both countries to enter into a fishery agreement that will resolve these navigational and enforcement problems. The Committee expects this new provision to serve as an invitation to Canada to negotiate a fishery agreement with the U.S. that establishes clear enforcement guidelines and ensures that the rights of all fishermen will be protected.

Section 114

This section enhances the enforcement of fisheries laws in two ways. First, it increases the maximum civil penalty for a violation of the MFCMA to \$100,000. Although the Committee recognizes the importance of tough penalties, it does not expect enforcement personnel to utilize the new higher penalties in cases involving minor infractions such as a vessel having an improperly stowed boarding ladder. The purpose of the increase in penalties is to encourage compliance with conservation regulations, not to create unnecessary headaches for fishermen. The Committee intends that the new high penalty schedule should be reserved for use in cases of signifi-

cant and severe offenses or serious repeat offenses; it should not result in a general across-the-board increase in penalties for violations of conservation regulations.

In addition to increasing civil penalties, this section gives the Secretary explicit authority to impose sanctions on fishing and processing permits issued to U.S. citizens and foreign nationals. As is the case with the increase in civil penalties, the Committee believes that this new permit sanction authority will serve as a deterrent to those who would violate fisheries conservation and management laws. Further, the Committee recognizes that the imposition of a permit sanction can be a serious penalty on an individual who makes his or her living from harvesting or processing fish. Therefore, the Committee has included specific discretionary authority to the Secretary which allows the Secretary to take into account a number of mitigating factors when deciding on a permit sanction.

Section 115

This section makes it clear that an assault on an observer is prohibited under section 307 of the MFCMA and will be considered a criminal offense.

Section 116

This section establishes a new rebuttable presumption in the MFCMA designed to facilitate enforcement of U.S. laws and regulations relating to anadromous species. The Committee believes that inclusion of this language will give enforcement agents greater authority to deal with foreign vessels that are operating on the high seas and illegally taking anadromous species of U.S. origin.

Section 117

This section expands the uses which can be made of fines, penalties, or forfeitures of property resulting from violations of the MFCMA or any other fishery resource law enforced by the Secretary. Given the limited amount of money appropriated for enforcement purposes and the high cost of enforcing fisheries resource laws, the Committee believes it appropriate that money received from fines, penalties, and property forfeitures should be made available for law enforcement. At the same time, the Committee does not intend that this expansion of existing law be used as an excuse by any enforcement agency to seek higher penalties than would normally be called for or to seek forfeitures of property simply as a way of enhancing its budget. Like other enforcement tools, the authorities provided by this section should be used wisely.

Section 118

This section adds a new provision to the MFCMA which is specific to the North Pacific Fishery Management Council. Nothing in this section should be construed as affecting the rights and responsibilities of other Regional Fishery Management Councils or as affecting fisheries other than those within the jurisdiction of the North Pacific Fishery Management Council.

This section allows the North Pacific Council to prepare and submit to the Secretary a fisheries research plan for any of the

fisheries under that Council's jurisdiction including the northern Pacific halibut fishery. A fisheries research plan could include the stationing of observers onboard vessels of the United States within those fisheries and a system of fees to pay the cost of implementing the plan. Although the Committee recognizes that quotas for the halibut fishery are established pursuant to international agreement, domestic law stipulates that the North Pacific Council will establish regional management measures. The Committee therefore believes that the halibut fishery should be subject to the research and observer plan and payment of fees that is contemplated by this section.

After a plan is prepared by the Council, it must be submitted to the Secretary for review. The Secretary is required to review the plan to ensure that it meets strict standards that are designed to avoid discrimination among fishermen and against residents of various states. The failure of a plan to meet these standards is cause for immediate rejection.

The section also limits the level of fees which can be charged to amounts necessary to cover the direct costs of the research program. It is the Committee's intent that the Secretary and the Council will coordinate any research program under this section with programs being carried out under other provisions of law involving observers on domestic fishing vessels. This will help ensure that observers are used efficiently.

Further, in drafting the research plan, the Committee expects the North Pacific Council to follow procedures similar to those that would be used to develop a fishery management plan. This will ensure that comments can be received from those affected by the research plan including members of the fishing industry and Federal officials whose expertise will be useful in designing the research plan.

While reviewing the plan, the Secretary shall conduct one public hearing in Alaska and one in Washington state. The Committee intends that the review process include an evaluation of the specific goals of the research program, the manner in which the program was developed and will be implemented, and the way that costs will be distributed among those paying the fee. The purpose is to provide a mechanism that will increase the amount of information available for the sound conservation and management of the fisheries in the Pacific Northwest. It is not intended to change government policy or to provide a back door mechanism whereby one group of fishermen acting through the Regional Fishery Management Council can affect the legitimate actions of another group of fishermen. A research plan should be designed to promote research and conservation, not to allocate fishery resources among various fishermen.

Finally, it is the intent of the Committee that any fees collected under a plan shall be used for the purpose of implementing that fishery research plan. The fees are not to be considered another revenue raising measure by any branch of the government; they are established for a specific purpose and are to be used only for that purpose.

Section 119

This section adds language to the MFCMA that is identical to a provision of the Marine Mammal Protection Act regarding the liability of a vessel owner for injuries to an observer stationed on board that vessel. The section absolves the vessel owner of liability except in cases where the injury to the observer occurred due to the vessel owner's willful misconduct or where the observer was engaged by the owner, master, or individual in charge to perform duties in service to the vessel. This latter provision does not include actions taken by an observer on a voluntary basis in order to ensure the safe operation of a vessel or the safety of the vessel's crew.

This section also stipulates that nothing in the MFCMA requires a vessel to carry an observer on board if the safety or health of the observer or the safe operation of the vessel would be jeopardized. For example, an observer should not be required on a vessel that is so small that it is unable to accommodate the observer without physical displacement of one of the crew members.

Section 120

This section provides authorizations for the MFCMA through Fiscal Year 1993.

Section 121

This section corrects a number of technical and grammatical errors in the MFCMA.

TITLE II—AUTHORIZATION OF ATLANTIC TUNAS CONVENTION ACT OF
1975

Section 201

Subsection (a) amends the Atlantic Tunas Convention Act of 1975 by requiring the President to appoint one of the non-government Commissioners from among individuals with knowledge and experience regarding commercial fishing in the Convention area and one from among individuals with knowledge and experience regarding recreational fishing in the Convention area. The Committee notes that this amendment conforms with the current practice of having both commercial and recreational interests represented by the Commissioners. Because this practice has worked well, the Committee has decided to formalize it.

This subsection also establishes a 3 year term for Commissioners and limits the time an individual can serve as a Commissioner to no more than 2 consecutive terms (6 years). Because of the growing importance of the International Convention for the Conservation of Atlantic Tunas (ICCAT), the Committee decided to establish terms for Commissioners to allow for broader participation by those with an interest in ICCAT.

Subsection (b) makes it clear that the terms of the current ICCAT Commissioners will not be considered and that these commissioners would be eligible for reappointment.

Section 202

This section terminates the terms of the current Commissioners on June 30, 1990 and requires the President to appoint or reappoint individuals to serve as Commissioners before that date.

Section 203

This section requires the Secretary of State to pay the travel expenses of the U.S. ICCAT Commissioners and authorized advisors in accordance with Federal travel regulations. In addition, it allows the Secretary of Commerce to reimburse the Secretary of State for these expenses. The Committee intends that no compensation, beyond eligible travel expenses, will be paid by the Secretary to Commissioners or advisors.

Section 204

This section gives the Secretaries of Commerce and State the authority to pay the necessary travel expenses of additional members of the advisory committee (other than those covered by section 203) in accordance with the Federal travel regulations.

Section 205

This section requires the Secretary of Commerce to issue regulations to ensure that the U.S. is in full compliance with all ICCAT recommendations no later than June 1, 1990. This requirement is prompted by testimony received by the Committee that indicated that the U.S. may have exceeded quotas for small and medium Atlantic bluefin tuna that were established by agreement with Canada and Japan pursuant to an ICCAT recommendation. To remedy this situation, the Committee has proposed in this section that the Secretary require permits for all fishermen harvesting bluefin tuna and that these fishermen be required to report their catch. This permit system is intended to provide the Secretary with much needed catch data to determine compliance with ICCAT quotas.

This section also gives the Secretary explicit authority to impose requirements on U.S. fishermen which may not be required by ICCAT but which may be necessary to obtain scientific data necessary for the conservation and management of species regulated by the Convention. However, these new requirements may not have the effect of increasing or decreasing any allocation of fish made to the U.S. pursuant to an ICCAT recommendation.

Section 206

This section authorizes appropriations for the U.S. share of ICCAT Commission expenses at the current level of \$1,000,000 per year through fiscal year 1993.

Section 207

This section expresses the sense of the Congress that at the 11th annual meeting of the Commission and thereafter, the Secretary, through the U.S. ICCAT Commissioners, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing in the Convention area. This provision is intended to comple-

ment the amendment to the MFCMA made by section 108 of this Act, which directs the Secretary of State to negotiate an international agreement to ban large-scale driftnet fishing.

This section also expresses the sense of the Congress that the Secretary, through the ICCAT Commissioners, should ask the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. These recommendations should include an international minimum harvest size and a reduction in harvest levels necessary to conserve the stock. These provisions reflect the Committee's belief that action by ICCAT is essential to the success of U.S. efforts to conserve and manage swordfish. The Committee notes that U.S. fishermen, in accordance with a proposed amendment to a swordfish plan developed under the MFCMA, are being asked to make drastic reductions in swordfish catches. Without similar actions by ICCAT member nations, the Committee is concerned that U.S. conservation efforts will result in increased catches by foreign fishermen without any additional conservation of the swordfish stock. The Committee, in proposing in this section that the Secretary of Commerce report back to the Congress on those nations not acting to conserve and manage swordfish, intends to monitor this situation closely and will continue to investigate other measures which could be taken to achieve effective international conservation of swordfish.

TITLE III—AUTHORIZATION OF FISHERMEN'S PROTECTIVE ACT OF 1967

Section 301

Section 301 reauthorizes Section 7 of the Fishermen's Protective Act through Fiscal Year 1991.

TITLE IV—REPLACEMENT, RECONSTRUCTION, OR MODIFICATION OF FISHING VESSELS

Section 401

Subsection (a) expands the uses for which the Capital Construction Fund for the Fishing industry may be used to include purchasing equipment or modifying qualified vessels to comply with requirements of the Commercial Fishing Industry Vessel Safety Act of 1988, Federal environmental protection laws including the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973, and laws and regulations including those relating to fishing vessel safety and seafood wholesomeness.

Subsection (b) provides conforming amendments and subsection (c) stipulates that a person who is party to an existing Capital Construction Fund agreement may within a certain period of time amend that agreement to include any of the additional purposes described in subsection (a). Finally, subsection (d) requires the Secretary of Commerce, the Secretary of Transportation, and the Secretary of the Treasury to issue regulations implementing this section no later than 6 months after the date of enactment of this Act.

TITLE V—MISCELLANEOUS

Section 501

Section 501 requires the President to initiate negotiations as soon as possible to develop and conclude agreements or treaties with other nations to protect and conserve species of endangered sea turtles, to encourage other agreements to protect specific ocean and land regions which are of special biological significance to such species, and to initiate the amendment of any existing international treaties to make them consistent with this section.

Section 501 also requires that the President within one year of enactment provide to the Congress (1) a list of those nations that conduct commercial shrimp fishing operations within the geographic range of endangered sea turtles, and (2) a list of those nations that conduct shrimp fishing operations that may have an adverse affect on them. In addition, this section requires the President to provide to the Congress a full report on the President's efforts under this section and a report on the status of measures taken by each listed nation to protect and conserve sea turtles.

A variety of sea turtle conservation and protection measures are currently carried out or under development in the shrimp fisheries of the United States. However, populations of the same endangered species of sea turtles migrate through areas within which other nations conduct shrimp fisheries and may not be subject to adequate protection in these areas. It is important that international agreements be negotiated to protect these populations of sea turtles throughout their ranges. This section is intended to promote the negotiation of effective international agreements to provide for the protection and conservation throughout their ranges of those populations of sea turtles which are affected by both U.S. and foreign shrimp harvesting operations.

Section 502

Section 502 requires the Secretary of Commerce to submit a comprehensive report to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science and Transportation on the status of the National Marine Fisheries Service facilities located in Kodiak, Alaska. The report shall focus on problems associated with the physical structure and location of the facilities and the costs of alleviating such problems, and shall include any proposals and associated costs for the National Marine Fisheries Service to utilize different facilities within the boundaries of the Kodiak Island Borough. Of special interest to the Committee are proposals to co-locate the NMFS facilities with the University of Alaska Fishing Industry Technology center. This option should be fully explored in this report.

Section 503

Section 503 requires the Secretary of Commerce to complete all of the Secretary's appointments for members of the Fishery Management Councils not later than one day after the date of enactment of this Act. In some cases, the Secretary has delayed action on Council appointments for an inordinate amount of time. The Committee believes that this delay has caused uncertainty and has

impaired the ability of the Councils to do their work. The intent of this section is to require the Secretary to complete the appointment process immediately.

Section 504

Section 504 encourages the New England Fishery Management Council to submit an amendment to the Atlantic Sea Scallop Fishery Management Plan to the Secretary of Commerce. Any such amendment shall consider the views of sea scallop fishermen and processors, and shall contain management measures that are not based on a scallop meat count, but may include controls on scallop harvesting effort. If no amendment is submitted within one year after enactment of this Act, the Secretary is encouraged to prepare such an amendment. The Committee is concerned that the Council has not given serious consideration to industry proposals for fishing effort controls. The current management program which relies solely on the so-called "meat count" is extremely costly to enforce and difficult to comply with. The committee hopes the Council can devise an alternative management plan that will ease the burden of compliance and reduce the cost of enforcement while conserving the stocks.

Section 505

Section 505 expresses the sense of the Congress that, in developing a management plan for the Atlantic bluefish fishery, the Atlantic States Marine Fisheries Commission and the appropriate Regional Fishery Management Councils should use current and reliable scientific data, consider traditional practices in the fishery used by commercial and recreational fishermen from different states, and prescribe conservation and management measures that take into account variability within the fishery related to local conditions and differences in habitat quality and other relevant factors.

Section 506

Section 506 expresses the sense of the Congress that the North Pacific Fishery Management Council should include in fishery management plans such measures as may be necessary to meet the economic needs of all individuals and communities which are dependent on the living marine resources in the exclusive economic zone off Alaska. In so expressing this concern, the Committee notes that many fishermen have participated in the Bering Sea fisheries for a considerable length of time and their participation should not be ignored.

Section 507

Section 507 expresses the sense of Congress that the Secretary of Commerce should reinstate joint jurisdiction for the Atlantic Swordfish Management plan under the five Regional Fishery Management Councils in the Atlantic, Gulf of Mexico, and Caribbean areas, that future amendments to the plan should consider all reasonable measures for the conservation and management of the fishery, and that the five Councils should consider information provid-

ed by the United States fishing industry in developing amendments to the plan.

Section 508

Section 508 expresses the sense of the Congress that the South Atlantic Fishery Management Council should develop an amendment to the Fishery Management Plan for Coastal Migratory Pelagics (Mackerels), and the Secretary of Commerce should commence to implement regulations under the amendment immediately thereafter. If the Council has not developed such an amendment within three months after the date of enactment of this Act, the Secretary is encouraged to develop an amendment using the authority in Section 304(c) of the MFCMA. The purpose of the amendment is to assure that, if it becomes necessary to close the mackerel fishing during a predetermined season or under a quota at a time by which the fishermen of a region or State traditionally involved in the fishery have not had an opportunity to participate to an equitable degree in that fishery, that such closure be fair and equitable to all fishermen involved in the fishery. This language is a direct response to the closure of the King mackerel fishery in the South Atlantic in 1988, an action with particularly adverse consequences for fishermen in North Carolina.

Section 509

Section 509 amends Chapter 5 of title 14, United States Code to clarify that the Coast Guard is the Federal agency responsible for all aspects of safety relating to fishing, fish tender, and fish processing vessels and their crews and employees pursuant to relevant provisions of title 46. Certain memoranda developed by the Occupational Safety and Health Administration have the potential to cause uncertainty, overlap, and duplication in activities regarding vessel safety. The intent of this section is to make it completely clear that the Coast Guard is solely responsible for such activities.

COMPLIANCE WITH CLAUSE 7, RULE XIII

In accordance with paragraph (d) of this clause, the provisions of this clause do not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office has been included in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2061 would not have a significant inflationary impact on the nation's economy.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

Pursuant to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment held legislative hearings on May 2,

1989, May 8, 1989, July, 20., 1989, August 8, 1989, and August 11, 1989.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Merchant Marine and Fisheries has received no report from the Committee on Government Operations of Oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of rule X of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with the following estimate and comparison of costs of H.R. 2061 pursuant to section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 8, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2061, the Fishery Conservation Amendments of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT F. HALE,
(For Robert D. Reischauer).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2061.
2. Bill title: The Fishery Conservation Amendments of 1989.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, October 5, 1989.
4. Bill purpose: Title I of H.R. 2061 would amend the Magnuson Fishery Conservation and Management Act to authorize appropriations for programs under the Act for fiscal years 1990 through 1993. The bill would authorize \$75 million for 1990, \$76 million for 1991, \$77 million for 1992, and \$78 million for 1993. Title I also would institute a number of policy changes, such as directing the Secretary of State to negotiate a ban of driftnet fishing on the high seas.

In addition, Title I would allow the North Pacific Fishery Management Council to prepare a fisheries research plan requiring that observers be carried on board fishing vessels operating in the geographical area overseen by the council. The bill would authorize \$100,000 for each of fiscal years 1990 and 1991 to carry out this program, and would establish a system of fees to reimburse the Treasury for amounts appropriated for this program.

Title II would reauthorize the Atlantic Tunas Convention Act of 1975 and would authorize the appropriation of \$1 million annually for fiscal years 1990 to 1993 for programs under this Act. Title II

would also require the Atlantic Tuna Commission to develop a conservation plan for Atlantic swordfish.

Title III would reauthorize Section 7 of the Fishermen's Guaranty Fund, which is administered by the State. The fund provides compensation to vessel owners for certain financial losses sustained as a result of seizures of American fishing vessels. Funds for this program are derived from insurance payments by vessel owners, and from appropriations. All amounts available for payment are subject to appropriations action, regardless of the source.

Titles IV and V contain provisions regarding vessel sea turtle conservation, and various National Marine Service Facilities.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1993	1994
Offsetting receipts:				
Estimated budget authority	-0.4	-0.4	-	-
Estimated outlays	-0.4	-0.4	-	-
Authorizations:				
Specified	78.1	77.1	79.0	-
Unspecified	0.3	0.3	-	-
Total estimated authorization	78.4	77.4	79.1	-
Estimated outlays	32.0	31.8	78.1	25.2

The costs of this bill fall primarily within budget categories 300 and 370.

Basis of estimate: This estimate assumes that the amounts authorized would be appropriated for each fiscal year and that the estimated outlays are based on historical spending patterns.

Based on information provided by the Department of Commerce, CBO estimates that the international negotiations on deep-sea fishing required by this bill would cost an additional \$100,000 per year for three years; this amount is included in the estimate at the level in the table above.

Requiring that observers be carried on board fishing vessels operating in the jurisdiction of the North Pacific Fisheries Council would result in no net costs to the federal government because the fees collected are expected to cover the costs of the program.

Reauthorization of Section 7 of the Fishermen's Guaranty Fund would result in savings to the federal government of about \$0.2 million each year for 1990 and 1991. Based on the experience of the Fishermen's Guaranty Fund—no claims were filed during fiscal year 1989—we do not expect a substantial number of claims to be filed in fiscal year 1990 or 1991. The law can be attributed to the recent enactment of certain international fisheries agreements, and to the small number of vessels participating in the program. Total claims and administrative costs are ex-

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pected to be about \$0.2 million each year, which is included in the estimated authorization shown in the above table. The fees collected from the vessel owners are expected to total about \$0.4 million each year, and would appear in the budget as offsetting receipts.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Douglas Criscitello and Michael Sieverts.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

DEPARTMENTAL REPORT

U.S. DEPARTMENT OF STATE,
Washington, DC, June 1, 1989.

HON. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: Thank you for your letter of April 26 to Secretary Baker regarding H.R. 2061 authorizing appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1992.

As this legislation would not impact the Department of State, we defer to the views of the appropriate agencies.

With best wishes,

Sincerely,

JANET G. MULLINS,
Assistant Secretary, Legislative Affairs.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

16 U.S.C. 1801

§ 1801. Findings, purposes and policy

(a) FINDINGS.—

• • • • •
(8) *The collection of statistically reliable scientific data is essential to the effective conservation and management of the fishery resources of the United States.*

• • • • •
(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this chapter—

• • • • •
(2) to support and encourage the implementation and enforcement of international fishery agreements for the conser-

vation and management of highly migratory species, as well as swordfish and billfish, and to encourage the negotiation and implementation of additional such agreements as necessary;

* * * * *

(c) **POLICY.**—It is further declared to be the policy of the Congress in this chapter—

* * * * *

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; *considers the effects of fishing on immature fish and encourages development of measures that avoid unnecessary waste of fish*; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this chapter; [and]

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources[.]; and

(6) *to achieve international agreement on banning large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation as soon as possible, including support for the Tarawa Declaration and other international efforts to achieve such a ban.*

16 U.S.C. 1802

§ 1802. Definitions

* * * * *

(28) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(29) The term "migratory range" means the maximum area within which fish of a particular species can be found in numbers that indicate regular occurrence of that species during any part of a year, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(30) The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

16 U.S.C. 1811

§ 1811. United States sovereign rights to fish and fishery management authority

* * * * *

(b) **BEYOND THE EXCLUSIVE ECONOMIC ZONE.**—The United States claims, and will exercise in the manner provided for in this chapter, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within [any foreign nation's territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States.] *any waters of a foreign nation.*

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

16 U.S.C. 1812

[§ 1812. Exclusion for highly migratory species

[The sovereign rights and exclusive fishery management authority asserted by the United States under section 1811 of this over fish do not include, and may not be construed to extend to, highly migratory species of fish.]

16 U.S.C. 1821(d)

§ 1821. Foreign fishing

[(d) **TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**—(1) As used in this subsection—

[(A) The term “base harvest” means, with respect to any United States fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

[(B) The term “harvesting season” means the period established under this chapter by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

[(C) The term “calculation factor” means, with respect to each United States fishery, 15 percent of the base harvest.

[(D) The term “reduction factor amount” means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

[(i) an amount equal to 15 percent of the base harvest for that fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the calculation factor;

[(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

[(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 25 percent, but less than 50 percent, of the calculation factor.

[For purposes of this paragraph, the term "designated preceding harvest season" means—

[(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

[(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

[(E) The term "annual fishing level" for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

[(i) an amount equal to the reduction factor amount for that harvesting season; and

[(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

[(F) The term "United States fishery" means any fishery subject to the exclusive fishery management authority of the United States.

[(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

[(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this chapter (other than those relating to the determination of annual fishing levels), or

[(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

[(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

[(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e) of this section, may allocate such portion

for use during that harvesting season by foreign fishing vessels; except that if—

[(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

[(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

[then such portion or part may be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.]

(d) *TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.*—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.

16 U.S.C. 1822

§ 1822. International fishery agreements

(a) *NEGOTIATIONS.*—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b) of this section;

(2) shall negotiate governing international fishery agreements described in section 1821(c) of this title;

(3) may negotiate boundary agreements as provided for in subsection (d) of this section;

(4) shall upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species [and], highly migratory species, swordfish and billfish; and

* * * * *

16 U.S.C. 1824(b)

§ 1824. Permits for foreign fishing

(b) *APPLICATIONS AND PERMITS GOVERNING, INTERNATIONAL FISHERY AGREEMENTS.*—

* * * * *

[(10) *FEES.*—(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a

permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation.

[(B) Unless subparagraph (C) applies, the fees imposed under subparagraph (A) shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year.

[(C) If the Secretary, in consultation with the Secretary of State, finds that any foreign nation receiving an allocation under section 1821(e) of this title—

[(i) is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or

[(ii) is failing to take sufficient action to benefit the conservation and development of United States fisheries;

[the fees imposed under subparagraph (A) for the next fiscal year shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter during that fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone during such preceding year. If the Secretary, in consultation with the Secretary of State, finds, at any time during a fiscal year in which fees calculated under this subparagraph are in effect with respect to a foreign nation, that the conditions requiring that calculation no longer exist, the fees imposed under this paragraph with respect to that nation for the remainder of the fiscal year shall be calculated under subparagraph (B).

[(D) Before the end of each fiscal year, the Secretary, in consultation with the Secretary of State, shall review, based on the criteria established in subparagraph (C)(i) and (ii), the performance of every nation receiving an allocation under section 1821(e) of this title and provide written notice to the Congress of his findings and reasons therefor before the end of the fiscal year.

[(E) For purposes of this paragraph, the total cost of carrying out the provisions of this chapter includes, but is not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excludes costs for observers covered by surcharges under section 1821(e)(4) of this title.

[(F)(i) The amounts collected by the Secretary under this paragraph (except the amounts referred to in clause (ii) shall be transferred to the fisheries loan fund established under sec-

tion 742c of this title for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.

[(ii) The Secretary shall deposit into the general fund of the United States Treasury the difference between the amounts collected under subparagraph (C) and the amounts that would have been collected had that subparagraph not been enacted.]

(10) FEES.—(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State and the appropriate regional fishery management council, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

* * * * *

[(12) SANCTION.—(A) If any foreign fishing vessel has been used in the commission of any act prohibited by section 1857 of this title, or if the owner or operator of the vessel has committed such an act, the Secretary may, or if any civil penalty imposed under section 1858 of this title or any criminal fine imposed under section 1859 of this title has not been paid and is overdue, the Secretary shall—

[(i) revoke such permit, if any, issued for the vessel under this subsection, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

[(ii) suspend such permit for the period of time deemed appropriate;

[(iii) deny a permit under this subsection to the vessel; or

[(iv) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under that application.

[Any permit which is suspended under this subparagraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

[(B) The Secretary may temporarily deny or suspend the permit of any foreign fishing vessel pending the outcome of any administrative proceeding respecting a violation of section 1857 of this title if the Secretary determines that—

[(i) based upon information available to the Secretary, there are reasonable grounds to believe that the vessel has been used in the commission of such violation;

[(ii) immediate suspension of fishing privileges would serve the purposes of this chapter; and

[(iii) either—

[(I) the violation presents a serious threat to the public interest,

[(II) the violation presents a serious threat to the achievement of any purpose or policy of this chapter, or

[(III) the owner or operator of the vessel has been involved in a prior violation of this chapter.

[In applying this subparagraph—

[(I) the Secretary must notify the vessel owner of the proposed denial or suspension and give the owner a reasonable opportunity, not longer than 10 days from service of notice, to respond in writing or otherwise;

[(II) if a permit is denied or suspended under this subparagraph, any administrative proceeding respecting the violation at issue must be held as promptly as possible; and

[(III) if another permit application is pending for such vessel on or after the date of the violation, the Secretary need not act on that application before deciding whether or not to deny or suspend temporarily a permit under this subparagraph.]

16 U.S.C. 1826

§ 1826. Transitional provisions

(a) "GOVERNING INTERNATIONAL FISHERY AGREEMENT" DEFINED.—For purposes of this section, the term "governing international fishery agreement" does not include any governing international fishery agreement other than a governing international fishery agreement approved by the Congress pursuant to section 2 of the Fishery Conservation Zone Transition Act, or pursuant to any amendment to such section 2 if the effective date of such amendment is not later than February 28, 1977.

[(b) ACTION BY COUNCILS.—Section 1824(b)(5) of this title shall not apply to any application submitted by a foreign nation pursuant to a governing international fishery agreement for permits authorizing fishing during 1977 by vessels of that nation within the fishery zone or for anadromous species or Continental Shelf fishery resources beyond such zone, but each appropriate Council may prepare and submit comments to the Secretary on such application—

[(1) if the application has been received by the Council on or before February 21, 1977, within 7 days after such date; or

[(2) if the application is received by the Council from the Secretary of State after February 21, 1977, within 7 days after the date on which the Council receives the application.

[The provisions of the Federal Advisory Committee Act shall not apply to the actions of any Council in preparing such comments.

[(c) PERMITS.—Until May 1, 1977, the requirement in section 1824(a) of this title that foreign fishing vessels have on board a valid permit issued under section 1824 of this title shall not apply in the case of any foreign fishing vessel for which a permit is issued under an application to which subsection (b) of this section applies. The failure of any such vessel to comply with such requirement before such date shall not be deemed to be a violation of section 1857(l)(A) of this title.

[(d) **PERMIT FEES.**—Until May 1, 1977, the requirement in section 1824(b)(11) of this title, regarding the payment of applicable fees before foreign fishing permits are issued, may be waived by the Secretary with respect to permits to be issued under any application to which subsection (b) of this section applies if the Secretary is satisfied that the foreign nation which made the application will pay the applicable fees before such date. Any permit issued under the waiver provided by this subsection shall expire on May 1, 1977, if the Secretary does not receive on or before such date the applicable fees for the permit.]

§ 1826. International ban on large-scale driftnet fishing

“(a) **NEGOTIATIONS.**—The Secretary of State shall seek to secure, as soon as possible after the date of the enactment of the Fishery Conservation Amendments of 1989, an international ban on large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation.

(b) **REPORT.**—Not later than 18 months after the date of the enactment of the Fishery Conservation Amendments of 1989 and every year thereafter until such a ban is secured, the Secretary of State shall transmit to the Congress a report—

(1) describing the steps the Secretary has taken to initiate and complete negotiations pursuant to subsection (a);

(2) detailing the progress of those negotiations;

(3) listing those nations which have refused to enter into those negotiations and which engage in large-scale driftnet fishing on the high seas beyond the exclusive economic zone of any nation; and

(4) making recommendations for legislative action which could be taken to encourage the nations listed pursuant to paragraph (3) to cease large-scale driftnet fishing.

16 U.S.C. 1852

§ 1852. Regional fishery management councils

(a) **ESTABLISHMENT.**—

(7) **NORTH PACIFIC COUNCIL.**—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have [11] 13 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) of this section (5 of whom shall be appointed from the State of Alaska [and 2 of whom], 3 of whom shall be appointed from the State of Washington, and 1 of whom shall be appointed from the State of Oregon).

(b) **VOTING MEMBERS.**—

(2)(A) [The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction.] *The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or commercial experience, scientific expertise, or academic training, are knowledgeable regarding the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the maximum extent practicable, ensure a fair representation on each Council of the active participants (or their representatives) in the commercial fisheries under the jurisdiction of that Council.*

(3) Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) of this section shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. *No member appointed after January 1, 1986, may serve for more than 2 consecutive terms.*

(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. *if appointed before January 1, 1990, and at the daily rate of \$200 if appointed or reappointed after that date.* The voting members of each Council, any nonvoting member described in subsection (c)(1)(C) of this section, and the nonvoting member appointed pursuant to subsection (c)(2) of this section shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet [in the geographical area concerned] *at the appropriate times and places at the call of the Chairman or upon request of a majority of its voting members.*

(g) COMMITTEE AND PANELS.—

(3)(A) Each Council shall establish and maintain a United States fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

(4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

[(i) FISHERY HABITAT CONCERNS.—Each Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter.]

(i) FISHERY HABITAT CONCERNS.—(1) Each Council—

(A) may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

(B) shall, in a timely manner, comment on and make recommendations concerning any such activity that, in the view of the Council, may affect the habitat of an anadromous fishery resource under its jurisdiction.

(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity concerned on the habitat of the anadromous fishery resource.

(j) PROCEDURAL MATTERS.—

(3)(A) Each Council, scientific and statistical committee, and advisory panel—

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested [;

and if any meeting or portion is closed, the Council, committee, or panel concerned shall publish notice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting.]. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion thereof is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment matters or other internal administrative matters.

* * * * *

(6) At any time when a Council considers new information from a State or Federal agency or from a Council advisory body, it shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

* * * * *

16 U.S.C. 1853

§ 1853. Contents of fishery management plans

(a) REQUIRED PROVISIONS.—

* * * * *

[(6) consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels; and]

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery: Provided, That the adjustments shall not adversely affect the conservation efforts in other fisheries;

(7) include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery[.]; and

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed to ensure the effectiveness of the plan in

conserving and managing the fishery resources covered by the plan.

(b) **DISCRETIONARY PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

[(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;]

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

* * * * *

(7) require fish processors to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that observers be carried on board a vessel of the United States engaged in fishing in the exclusive economic zone for the purpose of collecting data necessary for the conservation and management of the fishery;

[(7)] *(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region; and*

[(8)] *(10) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.*

* * * * *

(d) **CONFIDENTIALITY OF STATISTICS.**—Any statistic submitted to the Secretary by any person in compliance with any requirement under [(subsection (a)(5))] *subsections (a) and (b)* of this section shall be confidential and shall not be disclosed; except—

(1) to Federal employees and Council employees who are responsible for management plan development and monitoring;
[or]

(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or

[(2)] *(3) when required by court order.*

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly dis-

close the identity or business of any person who is such statistics.

16 U.S.C. 1854

§ 1854. Action by Secretary

(b) REVIEW BY SECRETARY.—(1) A plan or amendment shall take effect and be implemented in accordance with section 1855(c) of this title if—

(A) the Secretary does not notify the Council in writing of—

(3)(A) If the Secretary disapproves, or partially approves, a proposed plan or amendment under paragraph (2), the Council may submit a revised plan or amendment, accompanied by appropriately revised proposed regulations, to the Secretary.

(D) A revised plan or amendment shall take effect and be implemented in accordance with section 1855(c) of this title if the Secretary does not notify the Council, in writing, of the close of the 60th day after the revised receipt date of his disapproval of the plan or amendment.

16 U.S.C. 1855

§ 1855. Implementation of fishery management plan

[(c)] (a) IMPLEMENTATION.—The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment—

(1) within 110 days after the plan or amendment was received by him for action under section 1854(b) of this title, if such plan or amendment takes effect under section 1854(b)(1) of this title;

(2) within 75 days after a revised plan or amendment was received by him under section 1854(b) of this title, if such plan or amendment takes effect under paragraph (3)(A) of section 1854 of this title; or

(3) within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 1854(c) of this title.

[(d)] (b) JUDICIAL REVIEW.—[Regulations promulgated by the Secretary under this chapter and actions described by the Secretary under this chapter and actions described by the Secretary under this chapter shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of Title 5, if a review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that [(1)] (A) section 705 of Title 5 shall not apply to such title is

not applicable, and [(2)] (B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

(2) *The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including actions that establish the date of closure of a fishery to commercial or recreational fishing.*

(3)(A) *Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1) not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.*

(B) *A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.*

(4) *Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.*

[(e)] (c) **EMERGENCY ACTIONS.**—(1) If the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members (other than the voting member appointed under section 302(b)(1)(B)), requests the taking of such action; and

(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which regulation is in effect. Any emergency regulation promulgated under this subsection—

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice to termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

[(g)] (d) RESPONSIBILITY OF SECRETARY—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this chapter. The Secretary may promulgate such regulations, in accordance with section 553 of Title 5, as may be necessary to discharge such a responsibility or to carry out any other provision of this chapter.

[(h)] (e) EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.—The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12291, dated February 17, 1981, shall be complied with within the time limitations specified in subsection (c) of this section or section 1854 (a) and (b) of this title as they apply to the functions of the Secretary under such provisions.

16 U.S.C. 1856

§ 1856. State jurisdiction

(a) IN GENERAL. * * *

* * * * *

(c) EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.—(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C); and

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specified the species to be processed.

[(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.]

(2) *The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—*

(A) *for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—*

(i) *consulting with the appropriate Regional Fishery Management Council and Marine Fisheries Commission, and*

(ii) *considering any comments received from the Governor of any other State where the fishery occurs; and*

(B) *if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.*

* * * * *

§ 1857. Prohibited acts

It is unlawful—

(1) for any person—

* * * * *

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C) [;] , or any whole live or frozen lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, or any successor to that plan, implemented under this title;

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; [or]

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this chapter [.] ;

(J) to knowingly and without authorization steal, remove, damage, or tamper with—

(i) fishing gear owned by another person and which is located in the exclusive economic zone; or

(ii) fish contained in such fishing gear; or to attempt to do so;

(K) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer or a supplementary observer on a vessel under this Act; or

(L) to engage in large-scale driftnet fishing.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title;

(B) in fishing, except recreational fishing permitted under section 1821(j) of this title, within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fish-

ing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 1824(b) or (c) of this title; or

(C) except as permitted under section 1856(c) of this title, in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone, unless the foreign fishing vessel has been issued a permit under section 1824 of this title which authorizes the receipt by such vessel of United States harvested fish of the species concerned; [and]

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating[.]; and

(5) *for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight under section 203.*

16 U.S.C. 1858

§ 1858. Civil penalties and permit sanctions

(a) **ASSESSMENT OF PENALTY.**—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of Title 5, to have committed an act prohibited by section 1857 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed **[\$25,000]** *\$100,000* for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

* * * * *

(g) **PERMIT SANCTIONS.**—(1) In any case in which a vessel has been used in the commission of an act prohibited under section 307, in which the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, or in which any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

(A) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(B) suspend such permit for a period of time considered by the Secretary to be appropriate;

(C) deny such permit; or

(D) impose additional conditions and restrictions on any permit issued to, or applied for by, that owner, operator, or vessel under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership.

(4) The Secretary shall reinstate any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

16 U.S.C. 1859(a)

§ 1859. Criminal offenses

(a) **OFFENSES.**—A person is guilty of an offense if he commits any act prohibited by—

[(1) section 1857 (a)(D), (E), (F), (H), or (J)¹ of this title; or]

(1) section 307 (1)(D), (E), (F), (H), (I), or (K); or

(2) section 1857(2) of this title.

16 U.S.C. 1860(e)

(e) **REBUTTABLE PRESUMPTION.**—(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited

by section 1857 of this title were taken or retained in violation of this chapter.

(2) *For purposes of this Act, it shall be a rebuttable presumption that any fish that is a member of an anadromous species and is found on board a fishing vessel within the migratory range of that species is of United States origin.*

16 U.S.C. 1861(e)

[(e) **PAYMENT OF STORAGE, CARE, AND OTHER COSTS.**—Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this chapter—

[(1) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter with respect to that fish or other property; and

[(2) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter.

[Any person assessed a civil penalty for, or convicted of, any violation of any provision of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation concerned.]

(e) **PAYMENT OF STORAGE, CARE, AND OTHER COSTS.**—(1) *Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provisions of this Act of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—*

(A) *the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;*

(B) *a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;*

(C) *any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for—*

(i) *equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings; or*

(ii) *equipping for law enforcement purposes any vessel, vehicle, or aircraft available for official use by the Secretary;*

(D) *any valid liens or mortgages against any property that has been forfeited;*

(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

(F) for the reimbursement of any Federal or State agency, including the United States Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.

16 U.S.C. 1862

§ 1862. North Pacific fisheries research plan

(a) **IN GENERAL.**—The North Pacific Fishery Management Council may prepare and submit to the Secretary a fisheries research plan which—

(1) requires that observers be carried on board vessels of the United States engaged in fishing in that part of the exclusive economic zone which is within the geographical area of authority of the Council, for the purpose of collecting data necessary for the conservation and management of any fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery; and

(2) establishes a system of fees to pay the costs of implementing the plan.

(b) **STANDARDS.**—(1) Any plan prepared and submitted under this section shall be reasonably calculated—

(A) to promote conservation and scientific understanding of the fisheries covered by the plan,

(B) to be fair and equitable to all fishermen and fish processors affected by the plan, and

(C) to be consistent with applicable provisions of law.

(2) Any system of fees established by a fisheries research plan under this section shall—

(A) provide that the total amount of fees collected may not exceed—

(i) the cost of stationing observers on board fishing vessels pursuant to the plan, less

(ii) any amount received for such purpose from any other source;

(B) be fair and equitable to all participants in the fishery covered by the plan;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan; and

(D) not be used to offset amounts authorized under other provisions of law.

(c) **RECEIPT OF PLAN BY THE SECRETARY.**—Not later than 60 days after the Secretary receives a research plan under subsection (a) from the Council, the Secretary shall—

(1) review the plan to determine whether it meets the requirements of subsection (b), and

(2)(A) reject the plan if it does not meet those requirements; or

(B) conduct 2 public hearings to obtain comments on the plan, one of which shall be held in the State of Alaska and one of which shall be held in the State of Washington.

(d) **ACTION BY THE SECRETARY.**—After analyzing comments received regarding a research plan under subsection (a), the Secretary shall, within 45 days after the last public hearing on the plan—

(1) request the Council to respond within 45 days to the comments; and

(2) implement the plan with any additional modifications provided by the Council which are consistent with subsection (b).

(e) **RESUBMISSION OF PLAN.**—Any research plan rejected by the Secretary under subsection (c)(2) may be resubmitted by the Council with changes, and upon such resubmission shall be treated as an original plan.

(f) **USE OF FEES.**—Amounts received by the United States in the form of fees established by a research plan under this section shall, after deducting an amount under subsection (g)(2), be available to the Secretary only for use for implementing the plan.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—(1) To carry out this section, including for the establishment of an observer program pursuant to this section, there are authorized to be appropriated to the Secretary (in addition to amounts made available by subsection (f)) \$100,000 for each of fiscal years 1990 and 1991.

(2) Amounts appropriated under this subsection shall be reimbursed to the Treasury from fees collected pursuant to this section.

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT, SECTION 401

SEC. 401. SPECIAL PROVISIONS REGARDING OBSERVERS.

(a) **CIVIL ACTION.**—(1) An observer on a vessel (or the observer's personal representative) under the requirements of this Act that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(2) This subsection does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(b) **PLACEMENT OF OBSERVERS ON U.S. VESSELS.**—A vessel of the United States shall not be required under this Act to carry an observer on board if the facilities of the vessel for quartering of an observer, or for carrying out observer functions, as so inadequate or

unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

16 U.S.C. 1882

§ 1882. Authorization of appropriations

There are authorized to be appropriated to the Secretary, for purpose of carrying out the provision of this chapter, not to exceed the following sums:

- [(1) \$5,000,000 for the fiscal year ending June 30, 1976.
- [(2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.
- [(3) \$25,000,000 for the fiscal year ending September 30, 1977.
- [(4) \$30,000,000 for the fiscal year ending September 30, 1978.
- [(5) \$30,000,000 for the fiscal year ending September 30, 1979.
- [(6) \$33,000,000 for the fiscal year ending September 30, 1980.
- [(7) \$40,000,000 for the fiscal year ending September 30, 1981.
- [(8) \$47,000,000 for the fiscal year ending September 30, 1982.
- [(9) \$59,000,000 for the fiscal year ending September 30, 1983.
- [(10) \$64,000,000 for the fiscal year ending September 30, 1984.
- [(11) \$69,000,000 for the fiscal year ending September 30, 1985.
- [(12) \$69,000,000 for fiscal year 1986.
- [(13) \$70,800,000 for fiscal year 1987.
- [(14) \$72,900,000 for fiscal year 1988.
- [(15)] (1) \$75,000,000 for fiscal year 1989.
- (2) \$75,000,000 for fiscal year 1990.
- (3) \$76,000,000 for fiscal year 1991.
- (4) \$77,000,000 for fiscal year 1992.
- (5) \$78,000,000 for fiscal year 1993.

16 U.S.C. 1822(e)

(e) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to [a exclusive economic zone] *an exclusive economic zone* (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

- (1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;
- (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

16 U.S.C. 1824(b)(4)(C)

(C) a copy or a summary of the application to the appropriate **[council]** *Council*.

16 U.S.C. 1852(j)(4)

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of **[council employee]** *Council employee* access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 1853(d) of this title, must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

16 U.S.C. 1854(c)(2)(B)

(B) The **[appropriate council]** *appropriate Council* must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may implement such plan or amendment under section 1855(c) of this title.

16 U.S.C. 971a

§ 971a. Commissioners

(a) APPOINTMENT AND NUMBER; SELECTION OF CHAIRMAN; RULES OF PROCEDURE.—(1) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(2) *Of the Commissioners appointed under paragraph (1) who are not government employees—*

(A) 1 shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(B) 1 shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(3)(A) The term of a Commissioner shall be 3 years.

(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than 2 consecutive terms as a Commissioner.

* * * * *

(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

16 U.S.C. 971b

§ 971b. Advisory committee

There is established an advisory committee which shall be composed of—

(1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and

(2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 1852(a) of this title.

Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. [On approval by the United States Commissioners—

[(A) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

[(B) in any case in which more than three members are designated by the advisory committee to attend any such meeting,

each such member to whom subparagraph (A) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.】

The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

16 U.S.C. 971d(c)

(c) REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS.—

(1)(A) Upon favorable action by the Secretary of State under section 971c(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(B) *Not later than June 1, 1990, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission and with other agreements under the Convention between the United States and any nation which is a party to the Convention.*

(2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) select for regulation one or more of the species covered by the Convention;

(B) divide the Convention waters into areas;

(C) establish one or more open or closed seasons as to each such area;

(D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;

(E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;

(F) require records of operations to be kept by any master or other person in charge of any fishing vessel;

(G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section [; and] ;

[(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Commission.]

(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

(K) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.

* * * * *

16 U.S.C. 971h

§971h. [Authorization of appropriations] *Appropriations*

[There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal years 1986, 1987, 1988 and 1989 such sums as may be necessary for carrying out the purposes and provisions of this chapter, including—

[(1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of Title 5; and

[(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.]

There are authorized to be appropriated to carry out the purposes of this Act, including use for payment of the United States share of the expenses of the Commission as provided in article VIII of the Convention, not more than \$1,000,000 for each of the years 1990, 1991, 1992, and 1993.

16 U.S.C. 971(d)

[(d) COMMISSION RECOMMENDATIONS CONCERNING REGULATIONS.—(1) Notwithstanding section 971(c), subsection (c) of this section, the recommendations concerning bluefin tuna (*Thunnus thynnus*) were proposed at the third regular meeting of the Commission during the period beginning November 20 and ending November 26, 1974, shall apply with respect to persons and vessels in the jurisdiction of the United States immediately upon the date the regulations required to be promulgated under this subsection.

[(2) Not later than the thirtieth day after the date the Secretary shall promulgate such regulations as are necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the department in which the Coast Guard is operating, providing procedures and methods of enforcement, the provisions of section 553 of Title 5, such regulations promulgated without general notice of proposed rulemaking may take effect on the date they are published in the Federal Register. Such regulations shall remain in effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the regulations referred to in paragraph (1) can take effect under article VIII of the Convention, and if such regulations do not take effect under the Convention with respect to persons or on or before such last date, such regulations shall continue in effect, subject to the provisions of the Convention, for so long as such recommendations are in effect.]

[(d)(1) It is the sense of the Congress that at the next annual meeting of the Commission and thereafter, the Secretary, in consultation with the Secretary of State, should seek support from the Commission to ban large-scale drift net fishing (as that term is defined in section 3028 of the Magnuson-Stevens Fishery Conservation and Management Act) in the Convention area.]

[(2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations for the conservation and management of Atlantic bluefin tuna. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a rebuilding level to the extent necessary to conserve the stock. If the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 30 days after each annual meeting of the Commission, shall notify the Secretary of State of the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage

this Act, including the joint expenses of the Convention for the years 1989,

BLUEFIN TUNA; this title and the Commission (which was established by the Act) during the period beginning November 26, 1974, to the jurisdiction of the United States immediately upon the date the regulations required to be promulgated under this subsection.

5, 1975, the Secretary shall promulgate such regulations as are necessary and appropriate to carry out the purposes of paragraph (1) of this subsection, including, after consultation with the department in which the Coast Guard is operating, providing procedures and methods of enforcement, the provisions of section 553 of Title 5, such regulations promulgated without general notice of proposed rulemaking may take effect on the date they are published in the Federal Register. Such regulations shall remain in effect with respect to persons and vessels subject to the jurisdiction of the United States until the last date on which the regulations referred to in paragraph (1) can take effect under article VIII of the Convention, and if such regulations do not take effect under the Convention with respect to persons or on or before such last date, such regulations shall continue in effect, subject to the provisions of the Convention, for so long as such recommendations are in effect.]

annual meeting of the Commission and thereafter, the Secretary, in consultation with the Secretary of State, should seek support from the Commission to ban large-scale drift net fishing (as that term is defined in section 3028 of the Magnuson-Stevens Fishery Conservation and Management Act) in the Convention area.

Secretary of State, in consultation with the Secretary of State, shall request the Commission to adopt recommendations for the conservation and management of Atlantic bluefin tuna. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a rebuilding level to the extent necessary to conserve the stock. If the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 30 days after each annual meeting of the Commission, shall notify the Secretary of State of the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage

and recommend measures which could be taken to achieve effective international conservation and management of the stock.

22 U.S.C. 1977(e)

(e) **EFFECTIVE DATE.**—The provisions of this section shall be effective until [October 1, 1989] *October 1, 1991*; except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts.

46 U.S.C. 1177

§ 1177. Capital construction fund

(a) **AGREEMENT RULES; PERSONS ELIGIBLE; REPLACEMENT, ADDITIONAL, OR RECONSTRUCTED VESSELS FOR PRESCRIBED TRADE AND FISHERY OPERATIONS; AMOUNT OF DEPOSITS, ANNUAL LIMITATION; CONDITIONS AND REQUIREMENTS FOR DEPOSITS AND WITHDRAWALS.**—

(1) Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1) of this section) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for [the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States] *any of the purposes described in paragraph (2) and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f) of this section. The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A) of this section) which is attributable to the operation of the agreement vessels.*

(2) *The purposes referred to in paragraph (1) are—*

(A) *providing replacement vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States; and*

(B) *purchasing equipment for or modifying a qualified vessel—*

(i) to comply with requirements established under the Commercial Fishing Industry Vessel Safety Act of 1988 (46 U.S.C. 2101 note);

(ii) to comply with Federal environmental protection laws, including the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(iii) to comply with laws and regulations, including those relating to the safety of fishing vessels and the wholesomeness of seafood.

* * * * *

(f) PURPOSES OF QUALIFIED WITHDRAWALS; NONQUALIFIED WITHDRAWAL TREATMENT FOR NONFULFILLMENT OF SUBSTANTIAL OBLIGATIONS.—(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, [or].

(C) any of the purposes described in subsection (a)(2)(B); or

[(C)] (D) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph [(C)] (D) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

* * * * *

14 U.S.C. Chapter 5

CHAPTER 5—FUNCTIONS AND POWERS

Sec.

81. Aids to navigation authorized.
82. Cooperation with Administrator of Civil Aeronautics
83. Unauthorized aids to maritime navigation; penalty.
84. Interference with aids to navigation; penalty.
85. Failure to maintain lights; penalty.
86. Marking of obstructions.
87. Buoys; color and numbering; passing.
88. Saving life and property.
89. Law enforcement.
90. Ocean stations
91. Safety of naval vessels.
92. Secretary; general powers.
93. Commandant; general powers.
94. Oceanographic research.
95. Commercial Fishing vessel safety.

* * * * *

§ 95. Commercial fishing vessel safety

The Coast Guard is the Federal agency responsible for ensuring all aspects of safety relating to fishing, fish tender, and fish processing vessels and their crews and employees pursuant to chapters 21, 23, 31, 33, 41, 45, and other relevant provisions of title 46.

ADDITIONAL VIEWS OF HON. DON YOUNG, RANKING MINORITY MEMBER, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, REGARDING H.R. 2061, "FISHERY CONSERVATION AMENDMENTS OF 1989

- H.R. 2061 is the result of a significant bipartisan effort by the Members and staff of the Subcommittee on Fisheries and Wildlife Conservation and the Environment. During the course of its deliberations, the Subcommittee conducted 5 hearings in four different States, heard oral testimony from 49 witnesses, and reviewed the written proposals of dozens of other individuals and groups. On the whole, the bill as reported by the Committee on Merchant Marine and Fisheries reflects a reasonable attempt to reconcile the often conflicting desires of fishermen, processors, environmentalists, and the general public.

Unfortunately, the bill is flawed in three areas, two involving sins of commission and one of omission. While on balance I believed that H.R. 2061 contains enough good points to warrant acceptance by the Committee, I also believe that these flaws must be corrected at the first available opportunity, and certainly before final legislation reaches the President.

First, the full Merchant Marine and Fisheries Committee ignored a compromise carefully constructed by the Subcommittee to respond to conservation problems with swordfish and billfish. Under the Subcommittee-reported proposal, the Secretary of Commerce and the Regional Fishery Management Councils would be granted some additional authority to affect tuna fisheries if such action was necessary to conserve other species. Unfortunately, the full Committee, by voice vote, adopted a substitute for section 104 of the bill which not only deleted the compromise language but which also overturned traditional U.S. tuna policy. If enacted, this language will spell disaster for our distant water tuna fleet. Further, it goes far beyond solving the problem addressed by the Subcommittee language. Finally, I want to emphasize that this language was adopted by voice vote at a time when many of the Committee members were not present at the mark-up. Even though the language in section 104 now stands, it certainly cannot be represented as the intent of the Committee.

The second major flaw in the bill is found in section 109(a), which modifies the structure of the North Pacific Fishery Management Council. In spite of widespread opposition to this provision from fishermen and fish processors in Washington, Oregon, California, and Alaska, the Committee accepted language endorsed by a small number of special interests. In doing so, the Committee completely ignored nearly 13 years of excellence in fisheries management that has made the North Pacific Council a model for the seven other Regional Fishery Management Councils.

At issue was a supposed lack of representation for fishermen from the States of Washington and Oregon. In fact, the current membership of the North Pacific Council, which provides a majority for Alaskans, was endorsed by former Senators Magnuson and Jackson from the State of Washington. Further, no evidence of discriminatory behavior was offered by supporters of the amendment, in spite of repeated requests. Given the lack of evidence in support of a need for change, and the widespread opposition from the very states that are supposedly under-represented, I find no logical reason for the Committee's action. In spite of ample reasons to oppose the amendment, the Committee voted in the most casual way imaginable to endorse a major change that I fear will have tragic consequences for sound fisheries management in the exclusive economic zone off Alaska. This language should be excised from the bill without further debate.

Finally, the Committee failed to address an issue that was the subject of considerable testimony in our hearings in Anchorage. A number of witnesses testified to the need to grant specific authority to the Regional Fishery Management Councils to allow them to address allocative problems between fishermen delivering fish to processing plants on shore and fishermen who harvest and process fish at sea. The Committee refused to address the problem at any point during markup sessions. While I believe, based on legal opinions provided by the National Oceanic and Atmospheric Administration, that the Councils have certain authority in this area, a clearer statement of that authority would have enhanced the Council's ability to effectively conserve and manage the fisheries under their respective jurisdictions.

As I stated at the outset, none of these flaws led to a vote against H.R. 2061 in Committee. Nevertheless, these problems must be addressed before a final measure is sent to the President.

DON YOUNG.